# (19,052.)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1903.

No. 401.

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MARTIN DALY, PLAINTIFF IN ERROR,

*vs.*

CHARLES ELTON, CHIEF OF POLICE OF THE CITY OF LOS ANGELES.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 10, 1903.

a Copy.

*Petition for Writ.*

In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY for a Writ of *Habeas Corpus*. S. F., No. 930.

Endorsed: Filed this 22 day of July, 1902. Geo. W. Root, clerk. By A. E. Hornlin, deputy clerk.

1 In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY for a Writ of *Habeas Corpus*.

*Petition for Writ.*

To the Honorable W. H. Beatty, chief justice, and to the honorable associate justices of the supreme court of the State of California:

The petition of Martin Daly respectfully shows: That your petitioner is imprisoned, restrained, detained and confined of his liberty by Charles Elton, chief of police of the city of Los Angeles, in the county of Los Angeles, State of California;

That the said imprisonment, detention, confinement and restraint are illegal, and the said illegality thereof consists in this, to-wit: That the only pretext or cause of said arrest or detention is by virtue of a warrant issued out of the police court of the city of Los Angeles, upon a complaint filed therein on the 6th day of March, 1902, charging that your said petitioner, Thaddeus Lowe, F. A. Smith, and others therein named, did, on the 6th day of March,
2 1902, in the city of Los Angeles, in the county and State aforesaid, commit a misdemeanor, in that they and he did wilfully and unlawfully erect and cause to be erected, maintain and cause to be maintained, certain works, establishment and manufactory for the manufacture of gas, and a certain tank, receiver and receptacle for the storage of gas within the corporate limits of said city of Los Angeles, outside the limits of the district described as follows, to-wit:

"Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the

center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following
3 the line of the Southern Pacific railway on Redondo street and Alhambra avenue, to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning. The avenue designated herein as Santa Fe avenue is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines."

That your said petitioner and the said other defendants were duly arraigned and informed of the said complaint, and thereupon your petitioner demurred to the said complaint on the ground that the said complaint did not show the commission of any act or acts which constituted a public offense, but the said demurrer of your petitioner was overruled by the said court, and thereupon your petitioner pleaded not guilty.

That thereafter, on the 29th day of March, 1902, the said F. A. Smith was tried upon the said complaint and afterwards, on the 9th day of April, 1902, the said police court ordered and adjudged that said defendant F. A. Smith be found guilty of a misdemeanor and fined in the sum of one hundred dollars, and ordered that unless the same should be paid forthwith, that the said F. A. Smith should be imprisoned in the city jail of the city of Los Angeles until said fine was paid in the proportion of one day's imprisonment for every one dollar of said fine, not exceeding one hundred dollars.

And thereupon, on the 11th day of April, 1902, the said defendant F. A. Smith duly appealed from the said judgment of the said police court to the superior court of the State of California, in and for the county of Los Angeles, and said appeal came on to be heard in and for the county of Los Angeles, on the 14th day of April, 1902, upon a statement of the case settled by the judge of said police court, em-

bodying the rulings of the said police court and a statement
4 of the evidence heard by the said police justice as herein-
before set forth, and the judge of the said superior court of the State of California, in and for the county of Los Angeles, before whom the appeal was heard, having taken the same under advisement, afterwards, to-wit, on the 18th day of June, 1902, entered an order in said court affirming the judgment of the said police court, and the judgment of the said police court now stands affirmed, and the said police court has proceeded to carry its said judgment into effect.

That thereupon, and thereafter, on the 27th day of June, 1902, said police court proceeded to try your said petitioner, said Martin Daly, upon the said complaint; and at the said trial the following evidence was offered.

On behalf of the prosecution JAMES R. C. BURTON was sworn and testified as follows:

My name is James R. C. Burton. I reside in the city of Los Angeles; am a carpenter. The defendant Martin Daly was on the 6th day of March, 1902, acting as foreman, and was in charge of certain men and laborers engaged in erecting and building certain works, establishment and manufactory for the manufacture of gas and a certain tank, reservoir and receptacle for the storage of gas, and did then and there at the time aforesaid do and perform work and labor upon those certain works, establishment and manufactory for the manufacture of gas and that certain tank, reservoir and receptacle for the storage of gas situated and located within the corporate limits of the city of Los Angeles outside of the limits of that district in said city of Los Angeles, described as follows:

"Beginning at the intersection of the center line of the official
5 bed of the Los Angeles river with the south charter boundary
line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of

Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue, to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning. The avenue designated herein as Santa Fe avenue is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines."

And did then and there employ, direct, supervise and control certain laborers and workmen who did then and there at said time and
6 place engage and work in the erecting and building of the aforesaid works, establishment and manufactory for the manufacture of gas and said certain tank, reservoir and receptacle for the storage of gas, and that on said 6th day of March, 1902, said works, establishment and manufactory for the manufacture of gas, and said certain tank, reservoir and receptacle for the storage of gas was not, nor was any one of the same completed, or in any respect finished.

The above was all the evidence that was offered by the prosecution at said trial, and thereupon the prosecution rested.

The defendant then offered the following evidence on his behalf.

MARTIN DALY, being duly sworn, deposes as follows:

My name is Martin Daly. Reside in Camden, State of New Jersey. That I am the defendant and was acting as foreman for Davis & Farnum Manufacturing Company in charge of the erection of the gas holder and water tank of said gas works; that said Davis & Farnum Manufacturing Company was a corporation organized under the laws of the State of Massachusetts and as sub-contractor was erecting said gas holder and water tank for and on behalf of the Valley Gas & Fuel Company, a corporation organized under the laws of the State of California, and that said Valley Gas & Fuel Company was erecting said works above described for and on behalf of and by virtue of the terms of a certain contract existing between said Valley Gas & Fuel Company and one Caroline W. Dobbins; that said Caroline W. Dobbins is, and has been at all times since the 28th day of September, 1901, the owner in fee of the following described premises, situate in the city of Los Angeles, State of California, to wit: All of lots 16, 17, 18 and part of lot 15 of block two,
7 Pomeroy & Mills' subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199 miscellaneous records of said Los Angeles county. All of said property is within the limits of the district described in ordinance No. 6663 (new series) which ordinance is hereinafter set forth in full.

That said premises so purchased by said Caroline W. Dobbins as aforesaid were bought by her for the purpose of erecting thereon a

gas works in which gas might be made and manufactured, for the purpose of distributing the same to the city of Los Angeles and its inhabitants, and that in said city of Los Angeles there are no public works owned and controlled by the said municipality for supplying the same with artificial light.

That on or about the first day of November, 1901, said Caroline W. Dobbins, pursuant to an ordinance numbered 6108 (new series) of the city of Los Angeles, made an application to the fire commissioners of said city for a permit to erect upon the aforesaid premises gas works.

That said application of said Caroline W. Dobbins was on said 1st day of November, 1901, duly presented to the board of fire commissioners of the city of Los Angeles, and was by them referred to the chief of the fire department for investigation and report, and thereafter, on the 8th day of November, 1901, the application of said Caroline W. Dobbins was taken up by the said board of fire commissioners, and the clerk of the board of fire commissioners reported that the petitioner had advanced the cost of sending the required notification to property owners as prescribed in the building ordinance aforesaid; and that notices had been sent notifying the record owners of the property in the block in which it was intended to erect said building or structure for which permit was sought, and the fact

8 that such permit was applied for, the nature of the same and the time and place, when and where the application for the granting of the same would be heard;

That at said meeting of the said board, said board gave an opportunity to all persons interested to be heard, and upon motion duly made, then and there took the said application and the matters therein referred to under advisement; that afterwards and on the 22nd day of November, 1901, on motion the application of said Caroline W. Dobbins for permission to erect and maintain a gas works was taken from the table, and it was moved and seconded that the application be granted; that upon the taking of the vote upon the motion, three commissioners, to-wit: Webb, Vickery and Frankenfield voted aye, and Commissioner Kuhrts voted no, and thereafter and after a space of ten minutes had elapsed from the announcement of the vote, said Commissioner Kuhrts directed the clerk of the board to change his vote upon said motion from no to aye, and gave notice that on the next meeting he would move to reconsider the question.

That afterwards, and on the 29th day of November, 1901, at the next meeting of the fire commissioners aforesaid, in accordance with the notice given at the last meeting, Commissioner Kuhrts moved to reconsider the motion carried at the last meeting to grant Caroline W. Dobbins a permit to erect gas works, which motion being put was lost by the following vote: no, Commissioners Webb, Vickery and Frankenfield; aye, Commissioner Kuhrts and Mayor Snyder.

That thereupon on said 22nd day of November, said Valley Gas & Fuel Company contracted and agreed to build for said Caroline W. Dobbins gas works and gas tanks upon the said above described

premises, and commenced on said 22nd day of November to lay the foundations, and do other work necessary in the construction of the aforesaid gas works.

9 That subsequent to the 22nd day of November, 1901, when the work of erecting said gas works was commenced as aforesaid, the said Valley Gas & Fuel Company, and others, for and on behalf of said Caroline W. Dobbins, the owner of said premises as aforesaid, had performed a great amount of labor and spent considerable sums of money in the erection of the aforesaid gas works, relying upon the aforesaid permit of the said fire commissioners, and said persons acting for and on behalf of the aforesaid Caroline W. Dobbins have been peaceably engaged in the erection of said gas works, and continued to be so engaged up to the 6th day of March, 1902, when this defendant and twenty-two others were arrested under the warrant issued upon the complaint filed in this action, and that during said time said Caroline W. Dobbins has caused to be erected on said premises a complete gas generator, also two scrubbers and washers used in the manufacture of gas, and that the erection of one water tank and gas holder have been commenced on the foundations already built, and that on the aforesaid 6th day of March, 1902, the said Caroline W. Dobbins has caused work to be done and performed upon the said premises in the erection of said gas works to the value of upwards of twenty-five thousand dollars, which said sum has been expended by her relying upon the permit granted by the said board of fire commissioners as aforesaid.

That on the 26th day of August, 1901, the council of the city of Los Angeles passed a certain alleged ordinance, of which the following is a true copy:

Ordinance No. 6663 (new series).

An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles.

10 The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street

to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence easterly along the center line of San Fernando street to the center line of the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

11 SECTION 2. Any person, firm or corporation who shall violate any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the city jail for not less than thirty (30) days nor more than one hundred (100) days, or by both such fine and imprisonment. Every day that such gas works, tank or reservoir is maintained in violation of the provisions of this ordinance, shall be deemed a separate offense within the meaning of this ordinance.

SECTION 3. Ordinance No. 174 approved July 2nd, 1885, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. The city clerk shall certify to the passage of this ordinance and cause the same to be published once in the Los Angeles Daily Journal and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of August 26th, 1901.

C. H. HANCE, *City Clerk.*

Approved this 26th day of August, 1901.

M. P. SNYDER, *Mayor.*

That on the 25th day of November, 1901, the council of the city of Los Angeles passed a certain alleged ordinance, of which the following is a true copy:

Ordinance No. 6779 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series,
12 entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26th, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence southeasterly following the line of the Southern Pacific railway on Redondo
13 street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los

Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of November 25th, 1901.

C. H. HANCE,
*City Clerk.*

Approved this 26th day of November, 1901.

M. P. SNYDER, *Mayor.*

That on the 3rd day of March, 1902, the council of the city of Los Angeles passed a certain alleged ordinance, of which the following is a true copy:

Ordinance No. 7029 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series, entitled, "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the
14 storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence notherly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of

Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolongated center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue, is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

15 SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of March 3rd, 1902.

C. H. HANCE, *City Clerk.*

Approved this 3rd day of March, 1902.

M. P. SNYDER, *Mayor.*

That thereupon, the court having heard the said evidence and having heard the argument of counsel, on the said 27th day of June, 1902, ordered and adjudged that the said defendant Martin Daly be found guilty of a misdemeanor, and fined in the sum of one hundred dollars, and ordered that unless the said sum should be paid forthwith, that the said defendant, Martin Daly, should be imprisrned in the city jail of the city of Los Angeles, until such fine was paid in the proportion of one day's imprisonment for every one dollar of said fine not exceeding one hundred dollars.

And your said petitioner having duly made a motion for a new trial and the same having been overruled, by said court, your petitioner, Martin Daly, duly appealed from the said judgment of the said police court to the superior court of the State of California in and for the county of Los Angeles, and said appeal came on to be heard in the superior court of the State of California, in and for the county of Los Angeles on the 27th day of June, 1902, upon the statement of the case settled by the judge of said police court, embodying the rulings of the said police court, and a statement of evidence

heard by the said police justice, as hereinbefore set forth; and Honorable Lucien Shaw, the judge of the superior court of the State of California, in and for the county of Los Angeles, before whom
16 the said appeal was heard, afterwards, to-wit: on the 27th day of June, 1902, entered an order in said court affirming the said judgment of the said police court, and the judgment of the said police court now stands affirmed, and the said police court has proceeded to carry its said judgment into effect.

That pursuant to the judgment of said police court, your petitioner is at this time in the custody of the said Charles Elton, chief of the police of the city of Los Angeles, and your petitioner charges that he is held by said Charles Elton in violation of the provisions of the constitution of the State of California, and of the United States of America, as he is advised.

Your petitioner further shows that at the date of the said arrest your petitioner, to-wit: on the 6th day of March, 1902, and for some time prior thereto, was and had been in the employ of the Davis & Farnum Manufacturing Company, a corporation organized under the laws of the State of Massachusetts, with its principal place of business in Waltham in the State of Massachusetts, and there engaged in the manufacture of gas works and gas holders and other appliances used in the manufacture and storage of gas; that the said Davis & Farnum Manufacturing Company had entered into a contract with the Valley Gas & Fuel Company aforesaid to erect for Caroline W. Dobbins a certain gas holder upon the premises hereinbefore described, and said Davis & Farnum Manufacturing Company sent your petitioner to the city of Los Angeles to act as foreman of the men in charge of the erection of said gas holder for the said Valley Gas & Fuel Company upon the premises of the said Caroline W. Dobbins aforesaid; that by the arrangement between the said Davis & Farnum Manufacturing Company and the said Valley Gas & Fuel Company your petitioner and the other men so employed were, while working upon the said gas holder, under the control and direction of the said Valley Gas & Fuel Company and
17 paid by it for their services, and the same charged to the said Davis & Farnum Manufacturing Company on account of the contract for the erection of the said gas holder by the said Valley Gas & Fuel Company for the said Caroline W. Dobbins upon the premises aforesaid, and that while your petitioner was so employed he and the said F. A. Smith and other men in the employ of the said Davis & Farnum Manufacturing Company and the said Valley Gas & Fuel Company were arrested under the said complaint and charged with the alleged offense.

And your petitioner further represents that said complaint upon which your petitioner is charged does not state a public offense in this: That said alleged ordinance No. 6663, new series, of the city of Los Angeles, entitled "An ordinance prohibiting the erection and maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles, approved August 26th, 1901" is a void and invalid ordinance and is in violation of the provisions of

the constitution of the State of California, and of the provisions of the fourteenth amendment of the Constitution of the United States, in that it is an attempt on the part of the city of Los Angeles to make and enforce a law which abridges the privileges and immunities of the citizens of the United States, in that it attempts to prohibit the erection or maintenance of any works, establishment or manufactory for the manufacture of gas, and the storage of gas within the corporate limits of the city of Los Angeles, except within the limits described in said ordinance, for that said business of erecting and maintaining gas works is not a nuisance, but is a lawful occupation and protected by the provisions of section 19, article 11 of the constitution of the State of California.

And your petioner further alleges that said complaint upon which your petioner is charged does not state a public offense in this,
18 that the said alleged ordinance of the city of Los Angeles No. 7029, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection and maintenance of gas works, gas tanks, or reservoirs, within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section 1 of said ordinance," is a void and invalid ordinance as against the vested rights acquired by the said Caroline W. Dobbins, under and by virtue of the ordinance of the city of Los Angeles approved on the 26th day of August, 1901, as hereinbefore set forth, (if said ordinance shall be held a valid ordinance) by the purchase by her of the property hereinbefore described within the limits which by said ordinance it was lawful to erect gas works within the city of Los Angeles; by the permit granted to her by the board of fire commissioners of the city of Los Angeles on the 22d day of November, 1901, as aforesaid; and by the work performed by her and on her behalf thereunder upon the premises aforesaid; and by the expenditure by her of the large sums of money as hereinbefore set forth in the attempted erection of gas works upon said premises; and by reason of the premises aforesaid, the said ordinance is in violation of the provisions of the constitution of the State of California, section 16, article 1 thereof, that no law impairing the obligation of contracts shall ever be passed and in violation of the provisions of the Constitution of the United States of America, section 10, article 1 thereof, prohibiting any State from passing any law impairing the obligations of contracts and is in violation of the fourteenth amendment of the Constitution of the United States, prohibiting any State from making and enforcing any law abridging the privileges or immunities of any citizen of the United States or depriving
19 any person of liberty or property without due process of law.

And your petitioner further alleges that said pretended ordinance hereinbefore set forth, numbered 7029, attempted to be passed by said city council of the city of Los Angeles on the 3rd day of March, 1902, is null and void and is in violation of the fourteenth amendment of the Constitution of the United States, in this: that it attempts to abridge the privileges or immunities of the said Caroline

W. Dobbins and said petitioner as the employee of said Caroline W. Dobbins and her said contractors, citizens of the United States, in that it purports to prevent the erection of structures set forth therein and does not seek to regulate and control the manner and method in which said structures shall be operated or erected; in that said alleged ordinance purports to prohibit the manufacture and storage of gas and does not seek to regulate the manner in which gas shall be stored or manufactured, or to limit the amount of gas which shall be so stored or so manufactured; and in that said alleged ordinance is unreasonable because it is so indefinite and uncertain in its descriptions of the alleged district in which the aforesaid structures may be erected and gas manufactured and stored, that it is impossible to ascertain therefrom the limits within which said alleged ordinance purports to grant permission for the erection of the aforesaid structures and for the manufacture and storage of gas.

That said ordinance is in violation of the provisions of the said fourteenth amendment of the Constitution of the United States in that it is an attempt upon the part of the City of Los Angeles to make and enforce a law which abridges the privileges and immunities of citizens of the United States in that it attempts to prohibit the erection and maintenance of any works, establishment or manufactory for the manufacture of gas and the storage of gas within the corporate limits of the city of Los Angeles except within the above described district, and that said business of erecting and maintaining gas works is not a nuisance but is a lawful occupation and protected by the provisions of section 19, article XI, of the constitution of the State of California.

That said ordinance is void and invalid and in violation of the provisions of the Constitution of the United States as against the said petitioner or any other person employed in behalf of the said Caroline W. Dobbins and her said contractors in the erection of any gas works or of any tank or receptacle for the recovery, storage or manufacture thereof upon the premises hereinbefore described as being in violation of the several rights acquired by her under and by virtue of said alleged ordinance of the city of Los Angeles No. 6663, hereinbefore set forth, and by virtue of the permit granted to her by the board of fire commissioners of the city of Los Angeles as aforesaid, under which permit and ordinance as aforesaid, your petitioner and the said Caroline W. Dobbins and her contractors have relied in prosecuting the aforesaid work. That said ordinance is further void, invalid and in violation of the provisions of the fourteenth amendment of the Constitution of the United States in that it is unreasonable and is an attempt and was passed in an attempt on the part of the authorities of the city of Los Angeles to foster a monopoly and to protect the Los Angeles Lighting Company, a corporation organized under and by virtue of the laws of the State of California, in the enjoyment of a monopoly of the business of manufacturing and distributing gas in the city of Los Angeles, and for the purpose of discriminating against the said Caroline W. Dobbins

and to prevent her from establishing and maintaining a gas
21 works within the limits of the city of Los Angeles, as will hereinafter more fully and at large appear.

And your petitioner further alleges that the said Caroline W. Dobbins claims that she has the right, by virtue of the said ordinance passed by the city council of the city of Los Angeles on the 26th day of August, 1901, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles" if the same shall be held a valid ordinance, and by virtue of the purchase of certain lands by her subsequent thereto within the district in which it was lawful to erect gas works by the provisions of said ordinance, and by virtue of the permit granted to her by the board of fire commissioners, on the 22nd day of November, 1901, as hereinbefore set forth, and by reason of the acceptance by her of said permit and the expenditude of the large sums of money by her expended in the attempted erection of said gas works as hereinbefore set forth, to continue the erection of the said gas works on the premises so purchased by her as hereinbefore described, and thereon to operate and maintain the said gas works upon said premises, and of possessing the said property and the rights so acquired without hindrance or opposition from the said City of Los Angeles or its municipal authorities; but your petitioner avers that the said authorities of the said city of Los Angeles threaten that if your petitioner should again engage in the employ of the said Caroline W. Dobbins in the erection of said gas works upon the said premises of the said Caroline W. Dobbins hereinbefore described, or in the maintenance of the said gas works when so erected, that they will continue to arrest and imprison your petitioner as often as he shall engage in said employment and in said work.

And your petitioner further alleges that said ordinance No.
22 7029 is void and invalid and is in violation of the provisions of the fourteenth amendment to the Constitution of the United States in that it is unreasonable and is an attempt on the part of the authorities of the city of Los Angeles to foster a monopoly of the manufacture and distribution of gas in the city of Los Angeles by the Los Angeles Lighting Company aforesaid, which it has heretofore enjoyed, and for the purpose of discriminating against said Caroline W. Dobbins and to prevent her from erecting and maintaining gas works within the city of Los Angeles and that in its enforcement it is made by the authorities of the city of Los Angeles to operate only against the said Caroline W. Dobbins and against no other person or persons whomsoever, or corporation whatsoever, as will hereafter more fully and at large appear.

And your petitioner alleges that the said city of Los Angeles is a municipal corporation created and existing under and by virtue of an act of the legislature of the State of California adopted January 31st, 1889, and that there are within the limits of the city of Los Angeles in said southern district of California, 42.37 square miles of territory, within which limits there are large areas of land unoccu-

pied and vacant and many locations therein suitable for the purpose of erecting gas works and which could be entirely satisfactory to the neighboring inhabitants; that within the limits of said prescribed district of the said city of Los Angeles within which, by the terms of said alleged ordinance No. 7029, attempted to be adopted by the council of the city of Los Angeles March 3rd, 1902, as aforesaid, it is made lawful to erect and maintain gas works, there are 1.24 miles of territory, a map of which city of Los Angeles showing the outlines of said district described in ordinance No. 7029, indicated by red is hereto attached and made a part hereof; that the boundaries of said district are very irregular in their delineation and are not determined by any natural or
23 geographical lines or objects nor with regard to the conditions of the population or inhabitants of the said city of Los Angeles residing within said district, nor as to whether said district is densely or sparsely settled and populated, nor as to whether there are or are not therein large or any tracts of vacant and occupied land; but your petitioner avers that certain of said boundary lines were and are fixed solely for the purpose of protecting certain gas works or reservoirs and receptacles for the storage of gas owned by the aforesaid Los Angeles Lighting Company and more particularly those boundaries and lines in said ordinances described as running along the center lines of Violet street from the center line of Santa Fe avenue; "thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; and thus including in said district the premises known as block A of the E. B. Miller tract in the said city of Los Angeles, bounded on the north by Seventh street, on the east by Channing street; on the south by Atlantic street and on the west by Alameda street, in which block was and is located the reservoir and gas holder of the aforesaid Los Angeles Lighting Company, and thereby said ordinance discriminates in favor of said Los Angeles Lighting Company and against the said Caroline W. Dobbins and her rights.

24 And your petitioner alleges that within the limits of the said city of Los Angeles and without and beyond the limits and boundaries of the district within which it is lawful to erect and maintain gas works, as by said alleged ordinance No. 7029, it is attempted to be provided, a large number of gas works used and employed in the manufacture, storage and distribution of gas, were at the time of the attempted passage of the said ordinance and still are maintained and operated, and more particularly the works and

plant operated by the Southern Pacific Railroad Company, a corporation, within their railroad yards on Buena Vista street in said city of Los Angeles and without the limits of said alleged district, where are maintained and operated retorts, holders and all necessary appliances for the manufacture of gas on a large and extensive scale for the purpose of supplying *gas on a large and extensive scale for the purpose of supplying* cars with gas; and also the gas works of the California Fruit Canners' Association at the corner of Macy and Anderson streets in the city of Los Angeles and without the limits of said alleged district, at which works gas is manufactured and stored by said cannery company for the purpose of supplying the said works of said company with gas, and also divers and sundry private gas plants used by divers and sundry persons throughout the said city of Los Angeles outside of said alleged district, for the purpose of supplying them and those associated with them with gas, of all which the municipal authorities of the city of Los Angeles then and there had notice and against none of which corporations or persons have the said authorities of the city of Los Angeles enforced or attempted to enforce the provisions of the said ordinance, but only against the said Caroline W. Dobbins and her employés as hereinbefore set forth.

25 And your petitioner further shows and alleges that the said territory surrounding the premises of the said Caroline W. Dobbins hereinbefore described, in which the said gas works of the said Caroline W. Dobbins were being erected, and which was, by the ordinance numbered 6663, new series, hereinbefore set forth, a portion of the territory within which the city of Los Angeles permitted the erection and maintenance of gas works, is and was a district devoted to manufacturing and commercial enterprises almost exclusively; that in said district, prior to the purchase of the property herein described by the said Caroline W. Dobbins, and upon which the said gas works are being erected for the said Caroline W. Dobbins as aforesaid, there was in operation a soap factory; that at all times since the first day of August, 1901, there has been and is now maintained within the district bounded by Redondo and Alhambra streets, the Los Angeles river and San Fernando street, in said city of Los Angeles, one wool-pulling factory which is directly across North Main street in the city of Los Angeles from the said premises of the said Caroline W. Dobbins, three wineries, numerous oil wells in operation, an extensive iron foundry in active operation, a brass foundry, and an extensive oil refinery; that there is a great deal of vacant and unoccupied land, which is and will continue to be comparatively worthless except for the purpose of the erection thereon of manufacturing establishments; that immediately adjacent to the easterly line of said district last herein described are the tracks of the Southern California railway on which are operated the freight and passenger trains of the Santa Fe railroad; that east of that and adjacent thereto is the Los Angeles river, and that east thereof is the right of way and tracks of the San Pedro, Los Angeles and Salt

Lake railroad; that immediately east of those tracks an ex-
26 tensive tannery is located and in operation; that immediately north of said district and north of San Fernando street and adjacent to the tracks of the Santa Fe railroad are the oil tanks and refinery of the Standard Oil Company in extensive operation; that prior to the granting of the permit by the board of fire commissioners of the city of Los Angeles to the said Caroline W. Dobbins on the 22nd day of November, 1901, the said board of fire commissioners and the members of said commission individually and jointly visited and examined the said premises and the said district surrounding the same, and having heard the protests of all persons who appear before them, decided and determined by the granting of said permit that said premises were in all respects a suitable place upon which to erect said gas works; that since the passage of the said ordinance under which your petitioner was charged with the commission of the alleged offense, and while said proceedings were pending in the courts of the State of California against your petitioner as aforesaid, the said city council of the said city of Los Angeles passed an ordinance creating a district in the city of Los Angeles within which it was lawful to erect and maintain oil refineries, the boundaries of which said district included a portion of the district bounded on the south by Alhambra avenue, and on the east by the Los Angeles river; and on the north the limits came within less than one block of the premises upon which the said Caroline W. Dobbins was erecting the said gas works, and there has in said district been erected a large oil refinery by permission of the municipal authorities of the city of Los Angeles.

And your petitioner alleges that said gas works are being constructed by the said Caroline W. Dobbins and are to be completed upon concrete foundations, with a superstructure of brick, steel and iron, of the best material procurable, and are not combustible
27 and that the same are so firmly and substantially constructed that there can be no danger from explosions, bursting or leakage; that all the machinery now in place therein or to be placed therein is of the most approved pattern, and constructed in accordance with the latest devices and improvements known in the manufacture of gas; that said works can and will be operated and maintained by the said Caroline W. Dobbins, by the use of the said devices and improvements and the said machinery therein contained, so that there will be no leakage or escape of odors, and that the same will not create a nuisance and will not interfere in any way with the health, comfort, safety or welfare of the inhabitants of said district and territory in which the said gas works are located upon the premises of the said Caroline W. Dobbins as hereinbefore described, or of any other of the inhabitants of said city of Los Angeles.

And your petitioner further alleges that he is advised that ordinance No. 7029 adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, is in violation of the provisions of the Constitution of the United States in this: that it is

an attempt upon the part of the City of Los Angeles to regulate commerce among the several States, for the following reasons: That in order to enable the Valley Gas & Fuel Company to carry out its said contract with the said Caroline W. Dobbins to erect upon her premises the said gas works the Davis & Farnum Manufacturing Company aforesaid, on or about the 17th day of September, 1901, at Waltham, in the State of Massachusetts, entered into a certain contract with the said Valley Gas & Fuel Company to erect in the city of Los Angeles for the said Caroline W. Dobbins certain portions of certain gas works for the manufacture, recovery and storage of gas, consisting more particularly of a water tank and gas
28 holder, said holder to be all completed and delivered to the said Valley Gas & Fuel Company for the said Caroline W. Dobbins pursuant to the contract aforesaid; and the said Davis & Farnum Manufacturing Company having immediately on the entering into of said contract commenced at its manufactory in the city of Waltham, the construction of said water tank and gas holder and completing the necessary machinery to be used in connection therewith, and then and there prepared and foundered the necessary iron and steel to be used therein, forwarded the same from the city of Waltham in the State of Massachusetts by railroad transportation to the city of Los Angeles in the State of California aforesaid, and delivered the same upon the premises of the said Caroline W. Dobbins hereinbefore particularly described, and then and there employed your petitioner, who was then and there residing at Camden in the State of New Jersey, to go to the State of California and then and there engage in the work of erecting the said water tank and gas holder as hereinbefore set forth; that your petitioner came to the city of Los Angeles and State of California under and by virtue of the employment hereinbefore set forth and commenced the work upon the said water tank and gas holder and was so engaged until the time of his arrest under the complaint hereinbefore set forth that the passage of the alleged ordinance by the city council of the city of Los Angeles, and the attempted enforcement thereof against your petitioner and the other employés engaged in the erection of said gas works for the said Caroline W. Dobbins has interfered with and prevented the said Davis & Farnum Manufacturing Company from carrying out their said contract with the Valley Gas & Fuel Company, which said contract was protected, as your petitioner is advised, by the aforesaid provisions of the Constitution of the United States in reference to commerce between the several States.

29 Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, directed to the said Charles Elton, chief of police of the city of Los Angeles, commanding him to have the body of your petitioner before your honors forthwith upon the granting of the writ herein prayed for, to do and receive what shall then and there be considered by your honors concerning said petitioner, together with the time and cause of his detention and said

writ; and that said petitioner above named be restored to his liberty.

Dated this 27th day of June, 1902.

MARTIN DALY.

STATE OF CALIFORNIA, *County of Los Angeles,* } *ss:*

Martin Daly, being first duly sworn, deposes and says: That he is the petitioner in the above entitled petition, that he has read the same and knows the contents thereof, and that the same is true, except as to those matters and things therein set forth on information and belief, and as to those, he believes them to be true; and further affiant saith not.

MARTIN DALY.

Subscribed and sworn to before me this 27th day of June, 1902.

[SEAL.] NATHAN NEWBY.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
*Attorneys for Petitioner.*

W. M. PIERSON, *Of Counsel.*

Filed July 22, 1903.

GEO. W. ROOT, *Clerk,*
By A. E. HORNLIN,
*Deputy Clerk.*

30 In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY for a Writ of *Habeas Corpus.*

*Return to Writ Made and Filed in this Court on the 3rd Day of July by Chas Elton, Chief of Police.*

Comes now, Charles Elton, the person upon whom the writ herein was served, and makes return thereto as follows:

I.

That he is, and at all times herein mentioned was the duly appointed, qualified and acting chief of police of Los Angeles city, county of Los Angeles, State of California, and as such is and at all said times was the duly and regularly authorized custodian of the city jail of said city, and of the prisoners therein, and of the prisoners committed by judgment of the police court of said Los Angeles city.

II.

That on the 3rd day of March, 1902, the city council of the said city of Los Angeles, duly and regularly passed an ordinance numbered 7029, new series, of said city, which said ordinance was on said 3rd day of March, 1902, duly signed and approved by the mayor of said city, and which said ordinance was duly published as required by law and went into effect on the 6th day of March, 1902, of which said ordinance the following is a true copy:

31 Ordinance No. 7029 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series, entitled, "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of
32 Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street;

thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue, is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of March 3rd, 1902.

C. H. HANCE, *City Clerk.*

Approved this 3rd day of March, 1902.

M. P. SNYDER, *Mayor.*

III.

That thereafter, to wit: on the 6th day of March, 1902, in said city of Los Angeles, a complaint was duly filed in the police court of said city, before H. C. Austin, a duly elected, qualified and acting police judge of said city and of said police court, charging
33 the petitioner, Martin Daly, together with other persons, with a violation of said ordinance No. 7029, which said complaint is in words and figures as follows, to wit:

In the Police Court of Los Angeles City, in the County of Los Angeles, State of California.

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THADDEUS LOWE, F. A. SMITH, JOHN DOE, SAM DOE, WILLIAM Doe, Richard Doe, Amos Doe, Joe Doe, James Doe, Charles Doe, George Doe, Frank Doe, Walter Doe, Alex. Doe, John Roe, Sam Roe, William Roe, Amos Roe, Joe Roe, James Roe, Richard Roe, Charles Roe, George Roe, Frank Roe, Walter Roe, Alex. Roe, and Leo Roe, Defendants.

*Complaint Criminal.*

Personally appeared before me, James R. C. Burton of Los Angeles city, who, being first duly sworn, complains and says: That on the 6th day of March, 1902, in the city of Los Angeles, county of Los Angeles, State of California, a misdemeanor was committed by Thaddeus —, F. A. Smith, John Doe, Sam Doe, William Doe, Richard Doe, Amos Doe, Joe Doe, James Doe, Charles Doe, George Doe, Frank Doe, Walter Doe, Alex Doe, John Roe, Sam Roe, William Roe, Amos Roe, Joe Roe, James Roe, Richard Roe, Charles Roe, George Roe, Frank Roe, Walter Roe, Alex. Roe, and Leo Roe, who at the time and place last aforesaid did wilfully and unlawfully erect and cause to be erected, maintain, and cause to be maintained, certain works, establishment and manufactory of gas; and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of said city of Los Angeles, California, outside of the limits of that certain district described as follows, to wit:

34 "Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso

street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue, to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning. The avenue designated herein as Santa Fe avenue is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines."

35 All of which is contrary to the form of the ordinances and resolutions adopted and approved by the municipal authorities of said city in such cases made and provided, and against the peace and dignity of the people of the State of California.

Said complainant therefore prays that a warrant may be issued for the arrest of said Thaddeus Lowe, F. A. Smith, John Doe, Sam Doe, William Doe, Richard Doe, Amos Doe, Joe Doe, James Doe, Charles Doe, George Doe, Frank Doe, Walter Doe, Alex Doe, John Roe, Sam Roe, William Roe, Amos Roe, Joe Roe, James Roe, Richard Roe, Charles Roe, George Roe, Frank Roe, Walter Roe, Alex Roe, and Leo Roe, and that they may be dealt with according to law.

JAMES R. C. BURTON.

Subscribed and sworn to before me this 6th day of March, 1902.

[SEAL.] W. W. STOCKWELL,
*Clerk of the Police Court.*

Which said complaint is endorsed: Filed Mar. 6, 1902, H. C. Austin, police judge.

IV.

That thereafter, to wit: on March 7th, 1902, said petitioner, Martin Daly, having been arrested on said charge was taken into said police court, before said judge of said court, in open court and was duly arraigned, fully informed of the charge against him, and of all his legal rights, and entered his plea of not guilty as charged.

That said petitioner was at all times in said police court present in person and with his attorneys Lynn Helm and E. C. Bailey.

V.

That on June 25th, 1902, said petitioner being present in said police court with his attorneys as aforesaid, both parties in
36 open court expressly waived trial by jury, which waiver was duly entered on the minutes and docket of said court, and at said petitioner's request the trial of said cause as to said Martin Daly was set for June 27th, 1902.

VI.

That on said June 27th, 1902, said Martin Daly being present in court with his attorneys as aforesaid, said cause was duly tried by the judge of said court, testimony being introduced by both parties, and the cause being duly submitted, said Martin Daly was adjudged guilty as charged by said court, whereupon the said Martin waived time for sentence.

Whereupon the judge of said court duly passed sentence upon said Martin Daly and entered judgment in words and figures as follows, to wit:

"Whereupon it is ordered and adjudged by the court this 27th day of June, 1902, that for said offense of unlawfully erecting gas works and a tank, reservoir and receptacle for the storage of gas within the corporate limits of the city of Los Angeles and outside the district described in ordinance No. 7029, new series, of said city of Los Angeles, the said Martin Daly be fined in the sum of one hundred dollars, and that in default of the payment of said fine on or before ten o'clock a. m. on the 27 day of June, 1902, the said Martin Daly be imprisoned in the city jail of said Los Angeles city in the proportion of one days imprisonment for each and every one dollar of said fine until the said fine be wholly satisfied, not exceeding one hundred days, and that the defendant be discharged on payment of such portion of said fine as shall not have been satisfied by imprisonment at the rate above described.

H. C. AUSTIN,
*Police Judge.*"

37 VII.

That thereupon a commitment was duly issued out of said police court and placed in the hands of this respondent, of which commitment the following is a true copy:

In the Police Court of the City of Los Angeles, in the County of Los Angeles, State of California—H. C. Austin, Police Judge.

The People of the State of California to the chief of police of the city of Los Angeles, Greeting:

Whereas, Martin Daly was on the 27 day of June, 1902, convicted before me, H. C. Austin, police judge in and for the city of Los Angeles, county of Los Angeles, and State of California, of the crime—unlawfully erecting gas works and a tank reservoir and receptacle for the storage of gas within the corporate limits of the city of Los Angeles, and outside the district described in ordinance No. 7029, new series, of said city of Los Angeles, committed in said Los Angeles city on or about the 6 day of March, 1902.

And whereas upon such conviction I did pass and enter judgment in words and figures as follows, to wit:

"Ordered and adjudged by the court this 27 day of June, 1902, that for said offense of unlawfully erecting gas works and a tank,

reservoir and receptacle for the storage of gas within the corporate limits of the city of Los Angeles and outside the district described in ordinance No. 7029, new series, of said city of Los Angeles, the said Martin Daly be fined in the sum of one hundred dollars, and that in default of the payment of said fine on or before ten o'clock a. m. of the 27 day of June, 1902, the said Martin Daly be imprisoned in the city jail of said Los Angeles city in the proportion of
38 one day's imprisonment for each and every one dollar of said fine until said fine be wholly satisfied, not exceeding one hundred days, and that the defendant be discharged on payment of such portion of said fine as shall not have been satisfied by imprisonment at the rate above prescribed.

H. C. AUSTIN,
*Police Judge.*"

And that, whereas, the said Martin Daly has refused to pay said fine, or any part thereof, and now at this hour of ten o'clock a. m. of this 27 day of June, 1902, the hour and day fixed in said judgment, the said defendant still refuses to pay said fine or any part thereof;

These are therefore to command you, the said chief of police of Los Angeles city, to take and receive the said Martin Daly and imprison him in the city jail of Los Angeles city in the proportion of one day's imprisonment for each and every one dollar of the fine not otherwise satisfied, until said fine be wholly satisfied, not exceeding one hundred days, and to discharge said defendant on payment into court of such remaining portion of said fine as shall not have been satisfied by imprisonment at the rate above prescribed.

Given under my hand and the seal of said police court at the city of Los Angeles, in the county of Los Angeles, this 27 day of June, 1902.

H. C. AUSTIN,
*Police Judge in and for Los Angeles City.*

VIII.

That on the 27th day of June, 1902, said Martin Daly duly filed his notice of appeal and appealed from the judgment of conviction as aforesaid to the superior court of said Los Angeles county, and a statement on appeal was thereupon duly settled and filed.
39 That on the 28th day of June, 1902, said matter of said appeal coming on regularly for hearing in said superior court, the defendant being present with his attorneys as before, the said judgment of said police court was duly affirmed, and a remit-itur from said superior court was duly filed in said police court, stating the facts of the affirmance of said judgment. That the said remit-itur is in words and figures following, to wit:

Department No. —.

In the Superior Court, County of Los Angeles, State of California, —— Term.

JUNE 27TH, 1902.

Present: Honorable Lucien Shaw, judge.

PEOPLE, Plaintiff, Respondent,
*vs.*
MARTIN DALY, Defendant, Appellant. } No. 3357.

On appeal from the police court of the city of Los Angeles, in the county of Los Angeles, State of California.

This cause coming regularly on this day for hearing on appeal from the judgment entered in the police court of the city of Los Angeles, in the county of Los Angeles, State of California, and from the order entered herein in said court denying defendant's motion for a new trial, and denying defendant's motion in arrest of judgment entered in said police court on the 27th day of June, 1902, Lynn Helm and Lee, Scott, Bailey & Chase appear in behalf of the defendant and appellant Martin Daly, and Messrs. Chambers and Davis & Rush appear for the plaintiff and respondent, and this cause having been this day presented and submitted, it is ordered by the court that the judgment and order of the police court of the city of Los Angeles, in the county of Los Angeles, State of California, be and they are hereby affirmed.

I hereby certify the foregoing to be a full, true and correct copy of an order entered on the minutes of said superior court, department No. 2 in the above entitled cause.

40 Attest my hand and the seal of the said superior court this 27th day of June, 1902.

C. W. BELL, *Clerk*,
By W. L. WARREN,
*Deputy Clerk*.

[SEAL.]

Said remittitur is endorsed as follows:

No. 38552. Superior court, county of Los Angeles. —— ——, plaintiff, *vs.* Martin Daly, defendant. Filed Jun- 28, 1902. H. C. Austin, police judge. —— ——, attorneys for defendant."

IX.

Wherefore your respondent makes return that he has said Martin Daly in his custody and under his power and restraint and detains said Martin Daly by virtue of said commitment, a copy of which is hereinbefore set forth and annexed to this return. And the original commitment is herewith produced and exhibited to the court.

And your respondent further returns that the fine imposed by said judgment has not nor has any part thereof been paid, and said judgment now remains in full force and effect and unsatisfied.

Wherefore respondent submits this return that justice may be done in the premises.

CHARLES ELTON,
*Chief of Police of Los Angeles City, State of California.*

July 3, 1903.—Writ filed on return.

41 Received copy of the within for the judge who tried the case this — day of July, A. D., 1902.

—— ——,
*County Clerk.*
By —— ——,
*Deputy Clerk.*

Due service of the within, and receipt of a copy hereof, is hereby admitted this — day of July, A. D., 1902.

—— ——.

42 In the Supreme Court of the State of California.

*Ex Parte*
*v.*
MARTIN DALY. } Crim., 930. H. C.

By the COURT: On reading and filing the within petition it is ordered that a writ of *habeas corpus* issue as therein prayed returnable before the supreme court in banc at San Francisco on Thursday the 3rd day of July 1902, at two o'clock p. m.

June 30 1902.

BEATTY, *C. J.*

Endorsed: Filed Jun- 30 1902. Geo. W. Root clerk by A. E. Hornlin deputy.

43 *Habeas Corpus.*

STATE OF CALIFORNIA,
*City and County of San Francisco,* } ss:

In the Supreme Court of the State of California.

The People of the State of California to Charles Elton, chief police, Los Angeles, Greeting:

We command you, that you have the body of Martin Daly, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Martin Daly shall be called, or charged, before the hon. the supreme court of Calif. at San Francisco on the 3rd day of July, A. D. 1902, at 2 o'clock p. m., of that day, to do and receive what

shall then and there be considered concerning the said Martin Daly. And have you then and there this writ.

By order of the court.

Witness, the Hon. W. H. Beatty, chief justice of the supreme court aforesaid, with the seal thereof hereunto affixed, this 30 day of June, A. D. 1902.

Attest: GEO. W. ROOT, *Clerk*,
[SEAL.] By A. E. HORNLIN, *Deputy Clerk*.

Endorsed: Filed July 3—1903 Geo. W. Root clerk by A. E. Hornlin, deputy.

[Endorsed:] Crim. No. —. Supreme court of California. —— —— *vs.* —— ——. Writ of *habeas corpus*. Filed —— —, 189-. Geo. W. Root, clerk, by —— ——, deputy.

44 JULY 3, 1903.

Bank.

*Ex Parte* DALY. H. C. Crim., 930.

Van Dyke J. disqualified retires. Petition and return to writ argued by Lynn Helm for petitioner, Davis & W. B. Mathews for respondent & submitted.

45 In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Appellant, *vs.* CITY OF LOS ANGELES, Defendant and Respondent. } L. A., No. 1330. Stipulation.

*It is hereby stipulated*, between the parties in the above entitled cause, by their respective attorneys, that an order may be entered in said cause in said supreme court, advancing said cause, and that the said case when so advanced may be submitted upon briefs filed in said cause, and in considering and deciding the same, the court may consider the briefs on file in the case of *Ex parte* Martin Daly on *habeas corpus*, criminal number 930. said case to be submitted on the third day of February 1903, at the time of the resubmission of the case of *Ex parte* Daly aforesaid.

*And it is further stipulated* that the appellant may within ten (10) days after such submission, file a reply brief in said cause.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
*Attorneys for Plaintiff and Appellant.*
W. B. MATHEWS,
*Attorney for Defendant and Respondent.*

Granted by the court.

Endorsed: Filed Feb. 7 1903. Frank. C. Jordan clerk by J. C. Crooks deputy.

46 By the COURT: The within entitled cause is hereby submitted in accordance with the stipulation of the parties to be considered in conjunction with the case of *Ex parte* Daly Cr. 930.
Feb'y 7, 1903.

BEATTY, *C. J.*

[Endorsed:] L. A. 1330. Caroline Dobbins *vs.* City of Los Angeles. Stipulation.
Endorsed: Filed Feb. 7 1903. Frank C. Jordan clerk by J. C. Crooks deputy.

47 FEB. 9, 1903.

Bank.

*Ex Parte* DALY. H. C. Crim., 930.

Cause submitted in accordance with stipulation and order of Feb. 3 1903. L. A. 1330.

BEATTY, *C. J.*

48 Endorsed: Filed Jun- 3 1903 Frank C. Jordan, clerk by R. D. Duke deputy.

In Bank.

In the Matter of the Application of MARTIN DALY for Writ of *Habeas Corpus*. Crim. No., 930.

By the COURT: The only ground upon which the applicant could be discharged on this proceeding, is the alleged invalidity of certain ordinances of the city of Los Angeles. But in the recently decided case of Dobbins *v.* City of Los Angeles, L. A. No. 1330, (Cal. Dec. vol. 25, p. —) the validity of those ordinances was directly involved, and it was there held that the same are valid; and on the authority of that case the prayer of the petitioner is denied.
The petitioner is remanded and the writ is discharged.

49 Endorsed: Filed May 29—1903 Frank C. Jordan, clerk, by J. C. Crooks deputy.

In Bank.

CAROLINE W. DOBBINS, Plaintiff and Appellant,
*vs.*
CITY OF LOS ANGELES, Defendant and Respondent. } L. A., 1330.

This action was brought to obtain an injunction restraining the defendant, The City of Los Angeles, a municipal corporation, from enforcing certain ordinances of the city prohibiting the erection or maintenance of gas works within certain parts of said city. A demurrer to the complaint was sustained in the court below and judgment rendered for defendant. From the judgment plaintiff appeals.

On the 26th day of August, 1901, the city adopted an ordinance, No. 6663, by which it was provided that "It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment, or manufactory, for the manufacture of gas; or any tank, reservoir, or other receptacle for the storage of gas, within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit." (And then follows a description of the district.) It was also provided that any person who should violate the above provision should be guilty of a misdemeanor, and upon conviction be punished by fine or imprisonment or both. On the 3rd day of March, 1902, the city adopted another ordinance No. 7029, amendatory of the said ordinance 6663. This second ordinance merely amends the first by changing the boundaries of the
50 area within which the erection and maintenance of gas works was prohibited. These two ordinances J. C. C. are the only ones necessary to be considered. The plaintiff was engaged in erecting gas works within the territory in which the erection of such works was prohibited by the second ordinance; and it is averred that, by procurement of the defendant, certain employees of plaintiff engaged in labor upon her said gas works have been arrested and prosecuted for a violation of said ordinance, and that defendant threatens to continue to arrest and prosecure her employees for such violation. The prayer of the complaint is that defendant be enjoined and restrained from enforcing said ordinances and from "prosecuting or proceeding with any prosecution commenced or to be commenced" under said ordinance against plaintiff or any of her agents or employees. There are other averments in the complaint which will be noticed hereafter.

The general contention of appellant that the ordinances in question are invalid and void because violative of the 14th amendment to the Federal Constitution, and of other constitutional guaranties State and Federal of the enjoyment of property, or vested rights, the equal protection of the law, etc., is not maintainable. The ordinances were passed in the exercise of the police power which is fully granted to the city of Los Angeles by statutory law, by its charter, and by the constitution of the State. Its charter gives it power to suppress or prohibit all offensive places of business, and to regulate or prohibit explosives, combustibles, or inflammable material within the city, or any specified part thereof. By the act of the State legislature of April 4, 1870, entitled "An act concerning gas works" (Stats. of 1869–'70 p. 815) it is provided that cities
51 "may also control the location and construction of works so that they may be erected on suitable localities to give the least discomfort or annoyance to the public." This act was expressly continued in force by subdivision 20 of section 19 of the Political Code. And by the State constitution, itself, (art. XI, sec. 11) it is provided that "any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, or other regulations, as are not in conflict with general laws." There is no

doubt therefore, that the exercise of this police power belongs to the respondent within its territorial limits; and the only question is whether the adoption of the ordinances in question was a legitimate exercise of it; for all property is held subject to that power. An ordinance obviously and undoubtedly foreign to any of the recognized purposes of the police power, and interferring with the ordinary enjoyment of property would, no doubt, be held by a court to be invalid. But where the ordinance is reasonably within a proper consideration of, and care for, the public health, safety, or comfort, a court will not disturb the legislative act; it will not substitute its own views of what is proper in the premises for those of the legislative body. In Munn *v.* Illinois, 94 U. S. 113, the U. S. Supreme Court states the rule thus: "If no state of circumstances could exist to justify a certain statute, then we may declare this one void because in excess of the legislative power of this State; but if it could, we must presume it did. Of the propriety of legislative interference, within the scope of the legislative power, the legislature is the exclusive judge," This rule is very fully discussed and declared in Powel *v.* Commonwealth of Penn., 127 U. S. 617—
52 the "Oleomargarine" case. (See also Crowley *v.* Christianson, 137 U. S. 87, and Canfield *v.* United States, 167 U. S. 518.) And it cannot be said judicially that volatile, inflammable, explosive, and bad smalling gas, is not within the category of things which interfere with the public safety, welfare, and comfort, and therefore beyond the reach of the police power. The exercise of this power is not confined to the regulation of only such interferences with the public welfare and comfort as come strictly within the common law definition of a "nuisance." (*Ex parte* Lacey, 108 Cal. 326; *Ex parte* Schrader, 33 Cal. 283.)

It is averred in the complaint that the said ordinances were adopted, not for the purpose of protecting public interests, but for the purpose of protecting and favoring a certain named company engaged in the manufacture and sale of gas in said city. But the motives which induce a legislative body to make a law cannot be considered in a judicial proceeding in which the validity of the law in question is involved. In Cooley's Constitutional Limitations sixth edition, p. 231, it is said: "Although it has sometimes been urged at the bar that the courts ought to inquire into the motives of the legislature where fraud and corruption were alleged and annul their action if the allegation were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon. The reasons are the same here as those which preclude an inquiry into the motives of the governor in the exercise of the discretion vested in him exclusively. He is responsible for his acts in such a case, not to the courts, but to the people;" and numerous authorities are referred to which sustain the text. (See also Hing *vs.* Crowley, 113 U. S. 703.)

It is also averred that prior to the adoption of the second or-
53 dinance plaintiff had made certain contracts with third parties to furnish materials for and do labor on gas works

which she was about to erect, and had purchased land to be used as a site for such works within the territory where the erection of such works, under the first ordinance was permitted, and had expended a considerable amount of money in building the foundation of her contemplated works, and in partly erecting the same; and that by the second ordinance the boundaries of the excepted district were so changed as to put her said land outside of the territory where gas works were permitted. And it is further alleged that prior to the adoption of the second ordinance she had commenced to erect her works under a permit of the board of fire commissioners of said city in pursuance of the fire and building ordinances. And she contends, that even if the general principle relied on is not maintainable, these additional facts make the second ordinance invalid as an unwarranted interference with the enjoyment of property, an impairment of the obligations of contracts, etc. But this contention cannot be maintained. The ordinance provides that "it shall be unlawful for any person to erect or maintain" gas works outside of the described district. This language clearly includes works in course of construction as well as those to be begun in the future; and under the authorities the exercise of the police power clearly covers prohibited buildings partly erected, although great hardship to the builder may follow. It is somewhat difficult to see exactly what is the character and significance of the alleged permit from the fire commissioners. Appellant contends that it was an express contract with the city to allow her to erect and maintain her gas works. We do not think that this
54 conclusion results from the averments of the complaint. At all events there was nothing in this permit which took away from the city the police power which it afterward exercised. The city could not thus estop itself from making and enforcing proper police regulations. In Fertilizing Co. *v.* Hyde Park, 97 U. S. 659, the legislature of the State had granted to plaintiff the privilege of manufacturing fertilizers in the village of Hyde Park and conveying the products through its streets, and plaintiff J. C. C. had expended $200,000 in constructing its plant; but it was held that notwithstanding these facts the village, by virtue of its police power, could prohibit the business and compel the plaintiff to abandon its works. In New Orleans Gas Co. *v.* Louisiana Light Co. 115 U. S. 672, the court say: "Rights and privileges arising from contracts with a State are subject to regulations for the protection of the public health, the public morals, and the public safety, in the same sense, and to the same extent, as are all contracts and all property, whether owned by natural persons or corporations. Whatever therefore in the manufacture or distribution of gas in the city of New Orleans proves to be injurious to the public health, the public comfort, or the public safety, may notwithstanding the exclusive grant to plaintiff, be prohibited by legislation, or by municipal ordinance passed under legislative authority." (See also Barbour *v.* Connelly, 113 U. S. 27; Stone *v.* Miss. 101 U. S. 814; Butchers'

Union Co. *v.* Crescent City Co. 111 U. S. 750; *Ex parte* Lacey, 108 Cal. 326).

Our conclusion is that the ordinances here involved are valid and that therefore the judgment should be affirmed. This view
55 makes it unnecessary to consider the question elaborately discussed by counsel, to wit, whether or not a court of equity will ever enjoin a criminal prosecution.

The judgment appealed from is affirmed.

McFARLAND, *J.*

We concur:

SHAW, *J.*
ANGELLOTTI, *J.*
LORIGAN, *J.*
HENSHAW, *J.*

In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Appellant,
vs.
CITY OF LOS ANGELES, Defendant and Respondent.
} L. A., No. 1330.

On appeal from the superior court of the county of Los Angeles.

I, Frank C. Jordan, clerk of the supreme court of the State of California, do hereby certify that the foregoing and annexed is a true and correct copy of the opinion filed May 29th, A. D. 1903, in the above entitled cause, as shown by the records in my office.

Witness my hand and seal of the court this 22rd day of July, A. D. 1903.

FRANK C. JORDAN, *Clerk*,
By J. C. CROOKS, *Deputy*.

56 Endorsed: Filed. May 29th 1903. Frank C. Jordan, clerk, by J. C. Crooks, deputy clerk.

57 Endorsed: Filed Jul- 3 1903 Frank C. Jordan, clerk, by J. C. Crooks deputy.

In the Supreme Court of the State of California.

In bank.

*Ex Parte* DALY. Crim. No. 930.

By the COURT: Rehearing denied, July 2, 1903, Beatty, C. J. Lorigan, J., Henshaw, J., dissenting. Van Dyke, J., not participating.

58 UNITED STATES OF AMERICA:

*Petition for Writ of Error.*

In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY for a Writ of *Habeas Corpus.*

To the Hon. William H. Beatty, chief justice of the supreme court of the State of California:

The petition of Martin Daly, respectfully shows that heretofore, on the 30th day of June, 1902, he was imprisoned, restrained, detained and confined of his liberty by Charles Elton, chief of police of the city of Los Angeles, a municipal corpofation organized under the laws of the State of California, and situated in the county of Los Angeles and State of California; that the said imprisonment, detention, confinement and restraint were illegal, and the said illegality thereof consisted in this, to-wit: that the only pretense or cause of said arrest or detention was by virtue of a warrant of arrest issued out of the police court of the city of Los Angeles on the complaint filed therein on the 6th day of March, 1902, charging that the said petitioner, Martin Daly, Thaddeus Lowe, F. A. Smith and others therein named, had on the 6th day of March, 1902, in the city of Los Angeles, in the county and State aforesaid, committed a misdemeanor in that they did wilfully and unlawfully erect and cause to be erected, maintain and cause to be maintained certain works, establishment and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within
59 the corporate limits of the city of Los Angeles, outside of the limits of the district described in said complaint and in the ordinance hereinafter set forth. That said petitioner and the said other defendants were duly arr-igned and informed of the said complaint, and thereupon your petitioner demurred to the said complaint on the ground that the said complaint did not show the commission of any act or acts which constituted a public offense, but the said demurrer of your petitioner was overruled by the said police court, and thereupon your petitioner plead not guilty.

That thereupon and thereafter, on the 27th day of June, 1902, said police court proceeded to try your said petitioner, said Martin Daly, upon said complaint, and at the said trial the following facts were made to appear: That your petitioner, Martin Daly, was on the 6th day of March, 1902, acting as a foreman and in charge of certain men and laborers engaged in erecting and building certain works, establishment and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas, and did then and there at the time aforesaid, do and perform work and labor upon those certain works, establishment and manufactory for the manufacture of gas and that certain tank, reservoir and receptacle

for the storage of gas, situated and located within the corporate limits of the said city of Los Angeles outside of the limits of that district in the city of Los Angeles described in said complaint and the ordinance of March 3rd, 1902, adopted by the city of Los Angeles hereinafter set forth, and did then and there employ, direct, supervise and control certain laborers and workmen who did then and there, at said time and place, engage and work in the erecting and building of the aforesaid works, establishment and manu-
60 factory for the manufacture of gas and build a certain tank, reservoir and receptacle for the storage of gas, and that on said 6th day of March, 1902, said works, establishment and manufactory for the manufacture of gas, and said certain tank, reservoir and receptacle for the storage of gas was not, or was any one of the same completed or in any respect finished.

That said petitioner, Martin Daly, was acting as foreman for Davis & Farnum Manufacturing Company, in charge of the erection of the gas holder and water tank of the said gas works; that said Davis & Farnum Manufacturing Company was a corporation organized under the laws of the State of Massachusetts and as sub-contractor was erecting said gas holder and water tank for and on behalf of the Valley Gas & Fuel Company, a corporation organized under the laws of the State of California, and that said Valley Gas and Fuel Company was erecting said works above described for and on behalf of, and by virtue of the terms of a certain contract executed between said Valley Gas and Fuel Company and one Caroline W. Dobbins; that said Caroline W. Dobbins is and has been at all times since the 28th day of September, 1901, the owner in fee of the following described premises situate in the city of Los Angeles, State of California, to-wit: All of lots sixteen, seventeen and eighteen, and part of lot fifteen of block two, Pomeroy & Mill's subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199 miscellaneous records of said Los Angeles county. That all of said property is within the limits of the district described in ordinance No. 6663, new series, which ordinance is hereinafter set forth in full; but is without the limits of the district described in ordinance
61 No. 7029, new series, hereinafter set forth in full.

That said premises so purchased by Caroline W. Dobbins as aforesaid, were bought by her for the purpose of erecting thereon a gas works in which gas might be made and manufactured for the purpose of distributing the same to the inhabitants of the city of Los Angeles, and that in said city of Los Angeles there are no public works owned and controlled by the said municipality for supplying the same with artificial light.

That afterwards, on or about the first day of November, A. D. 1901, the said Caroline W. Dobbins pursuant to an ordinance of the city of Los Angeles known as ordinance No. 6108, adopted by the city council of the city of Los Angeles December 28th, 1899, and known as the "building ordinance," made application for the purpose of the manufacture, recovery and distribution of gas, to the board of fire commissioners of the city of Los Angeles, a board authorized by

the city charter of the city of Los Angeles, for a permit to erect gas works upon the premises hereinbefore described for the manufacture, recovery and storage of gas, the said board of fire commissioners having authority under said building ordinance to grant said permit, and said premises being within the limits described by said ordinance passed by the said council of the city of Los Angeles on the 26th day of August, 1901, in which it should be lawful to erect and maintain works for the manufacture of gas, the said gas so manufactured at said works to be supplied to the inhabitants of the city of Los Angeles.

That afterwards, on the 22nd day of November, 1901, upon the application of the said Caroline W. Dobbins for permission to
62 erect and maintain said gas works, the said application was by the said board of fire commissioners duly granted and allowed.

That on the 22nd day of November, 1901, the said Valley Gas and Fuel Company contracted and agreed to build for said Caroline W. Dobbins gas works and gas tanks upon the said above described premises and commenced on said 22nd day of November, 1901, to lay the foundations and to do the other work necessary in the construction of the aforesaid gas works. That subsequent to the 22nd day of November, 1901, when the work of erecting the said gas works was commenced the said Valley Gas and Fuel Company for and on behalf of the said Caroline W. Dobbins, the owner of said premises, had performed a great amount of labor and expended considerable sums of money in the erection of the aforesaid gas works relying upon the aforesaid permit of the said board of fire commissioners, and said persons acting for and on behalf of the said Caroline W. Dobbins had been already engaged in the erection of said gas works and continued to be so engaged up to the said 6th day of March, 1902, when the said petitioner and twenty-two others were arrested upon a complaint filed in said police court aforesaid. That during said time said Caroline W. Dobbins had caused to be erected on said premises a complete gas generator, also two scrubbers and washers used in the manufacture of gas and that the erection of one water tank and gas holder had been commenced on the foundations already built, and that on the aforesaid 6th day of March, 1902, the said Caroline W. Dobbins had caused work to be done and performed upon the said premises in the erection of said works to the value of upwards of $25,000, which sum had been expended
63 by her relying upon the permit granted by said board of fire commissioners aforesaid.

That on the 26th day of August, 1901, the city council of the city of Los Angeles passed a certain ordinance of which the following is a true copy:

Ordinance No. 6663 (new series).

An ordinance prohibiting the erection or maintenance of gas-works, gas tanks or reservoirs within certain portions of the city of Los Angeles.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence easterly along the center line of San Fernando street to the center line of the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

SECTION 2. Any person, firm or corporation who shall violate any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the city jail for not less than thirty (30) days nor more than one hundred (100) days, or by both such fine and imprisonment. Every day that such gas works, tank or reservoir is maintained in violation of the provisions of this

ordinance, shall be deemed a separate offense within the meaning of this ordinance.

SECTION 3. Ordinance No. 174 approved July 2nd, 1885, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. The city clerk shall certify to the passage of this ordinance and cause the same to be published once in the Los Angeles Daily Journal and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of August 26th, 1901.

C. H. HANCE, *City Clerk.*

Approved this 26th day of August, 1901.

M. P. SNYDER, *Mayor.*

64 That on the 3rd day of March, 1902, the council of the city of Los Angeles passed a certain alleged ordinance of which the following is a true copy:

Ordinance No. 7029 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street

to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of March 3rd, 1902.

C. H. HANCE, *City Clerk.*

Approved this 3rd day of March, 1902.

M. P. SNYDER, *Mayor.*

That thereupon, the said police court having heard the said evidence of the facts aforesaid, on the said 27th day of June, 1902, ordered and adjudged that said petitioner, Martin Daly, be
65 found guilty of a misdemeanor, and fined in the sum of $100, and ordered that unless the said sum should be paid forthwith, that your petitioner, Martin Daly, should be imprisoned in the city jail of the city of Los Angeles until said fine was paid in the proportion of one day's imprisonment for every one dollar of said fine not exceeding $100. That your petitioner having duly made a motion for a new trial and the same having been overruled,

your petitioner, Martin Daly, duly appealed from the judgment of the said police court to the superior court of the county of Los Angeles, and the said appeal came on to be heard in the said superior court of the State of California in and for the county of Los Angeles, on the 27th day of June, 1902, and Honorable Lucien Shaw, judge of the superior court in and for the county of Los Angeles, State of California, and before whom the said appeal was heard, afterwards, to-wit: on the 27th day of June, 1902, entered an order in said court affirming the judgment of the police court, and the judgment of the said police court now stands affirmed and the said police court proceeded to carry its judgment into effect.

That pursuant to the judgment of the said police court your petitioner was at the time of the issuing of the writ of *habeas corpus* herein, in the custody of the said chief of police of the city of Los Angeles, and your petitioner was held by said chief of police in violation of the provisions of the constitution of the State of California and of the United States of America, as he was advised.

That thereupon your petitioner being still in the custody of the said Charles Elton, chief of police, on the 30th day of June,
66 1902, filed a petition in this honorable supreme court of the State of California for a writ of *habeas corpus* wherein, in the petition therein filed, your petitioner set forth the facts hereinbefore set forth, and also that on the said 6th day of March, 1902, and for some time prior thereto, that your petitioner had been in the employ of Davis & Farnum Manufacturing Company, a corporation organized under the laws of the State of Massachusetts, with its principal place of business in Waltham, in the State of Massachusetts, and there engaged in the manufacture of gas works and gas holders and other appliances in the manufacture and storage of gas. That the said Davis & Farnum Manufacturing Company had entered into a contract with the Valley Gas and Fuel Company aforesaid, to erect for Caroline W. Dobbins a certain gas holder upon the premises hereinbefore described, and said Davis & Farnum Manufacturing Company sent your petitioner to the city of Los Angeles to act as foreman of the men in charge of the erection of said gas works for the said Valley Gas and Fuel Company upon the premises of the said Caroline W. Dobbins; that by the agreement between the said Caroline W. Dobbins and the Davis & Farnum Manufacturing Company and the said Valley Gas and Fuel Company, your petitioner and the other men so employed were, while working upon the said gas holder, under the control and direction of the said Valley Gas and Fuel Company and by it paid for their services and the same charged to the said Davis & Farnum Manufacturing Company on account of the contract for the erection of the said gas works by the said Valley Gas and Fuel Company for the said Caroline W. Dobbins upon the premises aforesaid; and that while your petitioner was so employed he and the said F. A. Smith and
67 other men in the employ of the said Davis & Farnum Manufacturing Company and the said Valley Gas and Fuel Com-

pany were arrested under the said complaint and charged with the alleged offense.

That your petitioner in said petition by him filed in said supreme court on the said 30th day of June, 1902, sought to have declared and determined that said complaint upon which your petitioner was charged did not state a public offense in that said alleged ordinance No. 6663, new series, of the city of Los Angeles, entitled "An ordinance prohibiting the erection and maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles, approved August 26th, 1901," was a void and invalid ordidance and was in violation of the provisions of the constitution of the State of California and the provisions of the fourteenth amendment of the Constitution of the United States in that it was an attempt on the part of the city of Los Angeles to make and enforce a law which abridges the privileges and immunities of a citizen of the United States in that it attempted to prohibit the erection or maintenance of any works, establishment or manufactory for the manufacture of gas and the storage of gas within the corporate limits of the city of Los Angeles, except within the limits described in said ordinance, for that said business of erecting and maintaining gas works was not a nuisance, but was a lawful occupation and protected by the provisions of section 19, article 11 of the constitution of the State of California.

And your petitioner also sought to have declared and determined that the said complaint upon which your petitioner was
68 charged did not state a public offense in this, that said alleged ordinance of the city of Los Angeles, No. 7029, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection and maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," is a void and invalid ordinance as against the vested rights acquired by the said Caroline W. Dobbins under and by virtue of the ordinance of the city of Los Angeles approved on the 26th day of August, 1901, as hereinbefore set forth (if said ordinance should be held a valid ordinance) by the purchase by her of the property hereinbefore described within the limits which by said ordinance it was lawful to erect gas works within the city of Los Angeles; by the permit granted to her by the board of fire commissioners of the city of Los Angeles on the 22nd day of November, 1901, as aforesaid; and by the work performed by her and the petitioner herein on the premises aforesaid; and by the expenditure by her of the large sums of money as hereinbefore set forth in the attempted erection of gas works upon the said premises; and by reason of the premises aforesaid, the said ordinance was in violation of the provisions of the constitution of the State of California, section 16, article one thereof, that no law impairing the obligation of contracts should ever be passed, and in violation of the provisions of the Constitution of the United States of America, section ten, article one thereof, prohibiting any State from passing any law impairing

the obligation of contracts, and is in violation of the fourteenth amendment of the Constitution of the United States prohibiting any State from making and enforcing any law abridging the
69 privileges and immunities of any citizen of the United States or depriving any person of liberty or property without due process of law.

And that said ordinance was void and in violation of the provisions of the Constitution of the United States aforesaid, as against the said petitioner or any other persons employed in behalf of the said Caroline W. Dobbins and her contractors in the erection of any gas works or of any tank or receptacle for the recovery or storage or recovery thereof upon the premises hereinbefore described.

And your petitioner prayed that a writ of *habeas corpus* might be granted directed to the said Charles Elton, chief of police of the city of Los Angeles, commanding him to have the body of your petitioner before the supreme court forthwith upon the granting of the writ therein prayed, and receive what should then and there be considered by said supreme court concerning your petitioner together with the time and cause of his detention, and said writ, and that your petitioner should be restored to his liberty.

And such proceedings were had upon the filing of said petition and thereafter, that the said supreme court of the State of California ordered that a writ of *habeas corpus* should duly issue in said matter returnable before the said supreme court of California at San Francisco on the 3rd day of July, 1902, and thereupon, return was made on the said 3rd day of July, 1902, by the said Charles Elton, chief of police of the said city of Los Angeles, State of California, that he had the said petitioner, Martin Daly, under his custody and under his power and restraint, and that he detained the said Martin Daly by virtue of the said committment
70 issued by the said police court of the city of Los Angeles, and that the said fine imposed by the said judgment had not, nor had any part thereof been paid, and that said judgment was in full force and effect, and that said Martin Daly was held by virtue of the committment charging him with a misdemeanor, to-wit: a breach of the ordinance No. 7029, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance."

And your petitioner further shows that your petitioner did in said petition for writ of *habeas corpus* brought by him for the purpose aforesaid, to-wit: to secure his liberty from which he was restrained and imprisoned under the alleged charge of violating the said ordinance No. 7029, new series, adopted by the city council of the city of Los Angeles on the 3rd day of March, 1903, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901 by amending section one of said ordi-

nance," and claim and contend that said purported ordinance so adopted by the city council of the city of Los Angeles on the 3rd day of March, 1903, was, as to the rights of your petitioner, the said plaintiff in error, by reason of his employment by the said Caroline W. Dobbins and by reason of the rights acquired by her by the purchase of the land within the district described in the ordinance of August 26th, 1901, and by reason of the violation of her
71 contract entered into between her and the Valley Gas and Fuel Company, and by virtue of the rights secured to her by the city of Los Angeles on the 22nd day of November, 1901, and by reason of the erection of the gas works and the expenditure of large sums of money by her expended upon the premises aforesaid, invalid because in violation of the provisions of the Constitution of the United States prohibiting any State from passing any law impairing the obligation of contracts and because in violation of the provisions of the fourteenth amendment of the Constitution of the United States prohibiting any State from making and enforcing any law abridging the privileges or immunities of any citizen of the United States or depriving any person of liberty or property without due process of law; and the validity of the said ordinance of the said city of Los Angeles passed on the 3rd day of March, 1902, was drawn in question on the ground that it was repugnant to the provisions of the Constitution of the United States aforesaid.

That said petition of *habeas corpus* was on the 3rd day of July, 1903, heard in bank in the said supreme court of the State of California, and submitted to the decision of the honorable justices of the said court, and afterwards, on the 9th day of February, 1903, was by order of said court again submitted to said court, and on the 3rd day of June, 1903, an order was entered upon said petition that said petition should be discharged and your petitioner remanded to the custody of the said Charles Elton, chief of the police of the city of Los Angeles; and it was adjudged that the said ordinance of the city of Los Angeles adopted on the 3rd day of March, 1902,
72 was a valid ordinance as against the rights of your petitioner.

Your petitioner further avers that after the said decision of the supreme court of the State of California in bank, on the 3rd day of June, 1903, your petitioner filed a petition for a rehearing of the said case in bank, which said petition for a rehearing was on the 3rd day of July, 1903, denied, and the said judgment of the said supreme court discharging the said writ of *habeas corpus* and remanding your petitioner to the custody of the said Charles Elton has become final.

And your petitioner further shows that in said petition for a writ of *habeas corpus* brought by your petitioner, there has been a judgment in the highest court in the State of California in which a decision on the said petition could be had, and that by said decision there was drawn in question the validity of the ordinance of the city of Los Angeles No. 7029, new series, passed and adopted by the city of Los Angeles on the 3rd day of March, 1902, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordi

nance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," upon the ground that said ordinance was repugnant to the Constitution of the United States, and the decision of the State court is in favor of the validity of said ordinance.

And your petitioner alleges that by the said ordinance of the city of Los Angeles adopted on the 3rd day of March, 1902, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas
73 works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," the rights secured to your petitioner were violated because the obligation of the contract entered into between Caroline W. Dobbins the employer of your petitioner, and the said Valley Gas and Fuel Company and that the obligations of the contract between the said Caroline W. Dobbins, the employer of your petitioner, and the city of Los Angeles, granted and secured to the said Caroline W. Dobbins by the said city of Los Angeles, on the 22nd day of November, 1901, were impaired, contrary to the provisions of the Constitution of the United States prohibiting the State from passing any law impairing the obligation of contracts; and also that the rights of your petitioner were violated contrary to the provisions of the Constitution of the United States prohibiting the State from making and enforcing any law abridging the privileges or immunities of any citizen of the United States, or depriving any person of liberty or property without due process of law.

And the supreme court of the State of California did err in deciding in favor of the validity of the said ordinance of the city of Los Angeles No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance" and in not deciding that said ordinance was void as being in violation of the provisions of the Constitution of the United States aforesaid.

74 Wherefore, your petitioner prays that a writ of error presented herewith from the Suprem Court of the United States to the supreme court of the State of California be allowed, and such other process as will enable your petitioner to obtain a review of the said petition for a writ of *habeas corpus* wherein your petitioner is petitioner and plaintiff in error, and the said Charles Elton, chief of police of the city of Los Angeles, is respondent and defendant in error, and the correction of the error aforesaid, committed by the said supreme court of the State of California, and for such other and further orders as may be proper.

And for as much as by the order and judgment of the said police court of the city of Los Angeles and of the commitment therein by which your petitioner is restrained by the said Charles Elton and to whose custody your petitioner is remandsd by the order of

the said supreme court, if your petitioner is imprisoned in the city jail of the city of Los Angeles in the proportion of one day's imprisonment for each and every dollar of the fine imposed upon him until said fine be fully satisfied, not exceeding $100, your petitioner cannot have a hearing upon the writ of error herein before the Supreme Court of the United States until said fine shall have been satisfied, your petitioner prays that upon the allowing of the writ of error herein that your petitioner be enlarged upon recognizance, and your petitioner will ever pray.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
*Attorneys for Petitioner, Martin Daly.*

Endorsed: Filed Jul- 21, 1903. Frank C. Jordan, clerk, by J. C. Crooks, deputy.

75 In the Supreme Court of the State of California.

In the Matter of the Petition of MARTIN DALY for a Writ of *Habeas Corpus*, Petitioner and Plaintiff in Error.

*Order Allowing Writ of Error.*

Upon motion of Lynn Helm and Messrs. Lee, Scott, Bailey & Chase, attorneys for petitioner Martin Daly, and upon filing a petition for a writ of error and an assignment of errors,

It is ordered that a writ of error be, and hereby is, allowed to have reviewed in the United States Supreme Court the judgment heretofore entered herein, and that the amount of said bond on said writ of error be, and hereby is, fixed at five hundred dollars ($500).

And good cause having been shown, it is ordered that said petitioner be enlarged upon recognizance in the sum of $200\frac{00}{100}$ pending the hearing and determination of said writ of error.

Dated, this 16th day of July, 1903.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

Endorsed: Filed Jul- 21 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

76 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY, Plaintiff in Error.

*Order Fixing Bond on Application for a Writ of Error.*

The petitioner, the plaintiff in error Martin Daly, having this day filed his petition for a writ of error from the decision and judgment

thereof made and entered herein to the Supreme Court of the United States, together with an assignment of errors within due time, and also praying that an order may be made fixing the amount of security which the plaintiff should give and furnish upon the said writ of error, and that pending said writ of error the said petitioner might be enlarged upon recognizance, and said petition having this day been granted, and the said writ of error duly allowed,

Now therefore, it is ordered that the bond to be given by the said petitioner, Martin Daly, upon said writ of error, and the amount thereof is hereby fixed at the sum of five hundred dollars ($500), and the said plaintiff in error shall file with the clerk of said court a good and sufficient bond in the sum of five hundred dollars ($500), to the effect that if the said plaintiff in error shall prosecute the said writ of error to effect and answer all damages and costs if he fails to make his plea good, then the said obligation to be void; otherwise to remain in full force and effect; and that said Martin Daly be enlarged upon a recognizance in the sum of $200$^{00}_{100}$ to the effect that if the said Martin Daly, plaintiff in error shall not upon the hearing of said writ of error be ordered to be discharged from custody
77 and restored to his liberty, that he will surrender himself forthwith to the custody of the said Charles Elton, chief of police of the city of Los Angeles, or pay the fine that is assessed against him, for the non-payment of which he is committed herein. The said bond and recognizance to be approved by this court.

Dated, this 16th day of July, 1903.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

Endorsed: Filed Jul- 21 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

78 In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY, Petitioner, for a Writ of *Habeas Corpus*, Plaintiff in Error.

*Bond on Application for a Writ of Error.*

Know all men by these presents, that we, Martin Daly as principal, and the Union Surety & Guaranty Company of Philadelphia, a corporation organized under the laws of the State of Pennsylvania, with authority under the laws of the State of California to execute bonds, are held and firmly bound unto Charles Elton, chief of police of the city of Los Angeles, and to his successor in office, respondent, in the full and just sum of five hundred dollars ($500.00) to be paid to the said Charles Elton respondent and defendant in error, his successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of July, 1903.

Whereas, lately at a session of the supreme court of the State of California in a suit pending in said court wherein the said Martin Daly was petitioner for a writ of *habeas corpus*, a final judgment was rendered therein discharging the said writ and remanding the said Martin Daly to the custody of the said Charles Elton, chief of police of the city of Los Angeles, and the said Martin Daly having obtained from the said court a writ of error to reverse the judgment in the aforesaid matter and a citation directed to the said defendant,
79 the said Charles Elton, chief of police of the city of Los Angeles, is about to be issued, citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington in the District of Columbia.

Now the condition of the above obligation is such that if the said Martin Daly shall prosecute his writ of error to effect and shall answer all damages and costs that may be awarded against him, if he fails to make good his plea, then the above obligation to be void; otherwise to remain in full force and effect.

MARTIN DALY,
By EDWARD C. BAILEY, *His Attorney in Fact.*
[SEAL.] UNION SURETY & GUARANTY CO.,
By PAUL N. NIPPERT, *Its Attorney in Fact.*

The foregoing and within bond is hereby approved July 21st, 1903.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

Endorsed: Filed Jul- 21 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

80 In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY, Petitioner, for a Writ of *Habeas Corpus*, Plaintiff in Error.

*Recognizance upon Writ of Error.*

Know all men by these presents, that we, Martin Daly as principal, and the Union Surety & Guaranty Company of Philadelphia, a corporation organized under the laws of the State of Pennsylvania to execute bonds, are held and firmly bound unto Charles Elton, chief of police of the city of Los Angeles, and to his successor in office, respondent, in the full and just sum of two hundred ($200) dollars to be paid to the said Charles Elton respondent and defendant in error, his successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 16th day of July, 1903.

Whereas, lately at a session of the supreme court of the State of California in a suit pending in said court wherein the said Martin Daly was petitioner for a writ of *habeas corpus*, a final judgment was rendered therein discharging the said writ and remanding the said Martin Daly to the custody of the said Charles Elton, chief of police of the city of Los Angeles, and the said Martin Daly having obtained from the said court a writ of error to reverse the judgment in
81 the aforesaid matter, and pending the hearing thereof it has been ordered that the said Martin Daly be enlarged on a recognizance,

Now the condition of the above obligation is such that if the said Martin Daly shall appear and answer the judgment of imprisonment imposed upon him by the police court of the city of Los Angeles, and will at all times hold himself amenable to the orders and process of this court, and if the said judgment of this court discharging said writ shall be affirmed, will appear and render himself in execution thereof, or if he fails to perform either of these conditions, we will pay to the people of the State of California the sum of one hundred dollars, the amount of said fine, then the above obligation to be void; otherwise to remain in full force and effect.

MARTIN DALY,
By EDWARD C. BAILEY,
*His Attorney in Fact.*

[SEAL.] UNION SURETY & GUARANTY CO.,
By PAUL M. NIPPERT, *Its Attorney in Fact.*

The foregoing and within bond is hereby approved, July 23, 1903.
W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

Endorsed: Filed Jul- 23 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

82 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY, Plaintiff in Error. Crim., No. 930.

*Certificate of Final Judgment.*

It is hereby certified that this cause was ordered to be, and was determined in bank in the supreme court of the State of California, and that the said court in bank did on the 3rd day of June, 1903, decide said case and render judgment discharging the writ of *habeas corpus* herein and ordering the petitioner remanded to the custody of Charles Elton, chief of police of the city of Los Angeles, the respondent. And that thereafter, and within the time prescribed by

the rules of said court, to-wit: within twenty days after the filing of said judgment, the said petitioner filed in said court his petition presented to said court for a rehearing of the said case in said supreme court of the State of California in bank, and said petition was considered and acted upon by said supreme court of the State of California, and on the 3rd day of July, 1903, the said petition for a rehearing was by said court denied, and thereupon said judgment was final and the order remanding said petitioner ordered issued thereon.

Wherefore, this certificate is ordered to be made a part of the record and to be attested with the seal of said court.

Dated this 16th day of July, 1903.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

83 Attest: FRANK C. JORDAN,
*Clerk of the Supreme Court of the State of California,*
[SEAL.] By OSCAR A. TOLLE,
*Deputy Clerk.*

Endorsed: Filed Jul- 21 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

84 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

In the Matter of the Petition of MARTIN DALY, Plaintiff in Error.

*Assignment of Errors.*

Martin Daly, having petitioned the honorable chief justice of the State of California for an order permitting him to prosecute a writ of error to the honorable, the Supreme Court of the United States from the final judgment made and entered in said cause by the supreme court of the State of California, now makes and presents and files the following assignment of errors herein and says that in the record and proceedings in the above entitled matter there is manifest error in this, to-wit:

I.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was valid as to

the rights of the said plaintiff in error, Martin Daly, as the employee of Caroline W. Dobbins, acquired before the passage of said ordinance.

85 II.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was a valid police regulation, lawfully adopted by the city council of the city of Los Angeles in the lawful exercise of the police power granted to the city of Los Angeles by statute of the State of California by its charter, and by the constitution of the said State.

III.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was not an invalid ordinance as an unwarranted interference with the enjoyment of the property rights of the said plaintiff in error as the employee of said Caroline W. Dobbins, acquired prior to the adoption of said ordinance, and an *an* impairment of the obligation of the contracts made before the passage of said ordinance.

86 IV.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was not a valid ordinance as abridging the privileges and immunities of the said plaintiff in error, and depriving him and his employer, said Caroline W. Dobbins, of her property acquired prior to the adoption of said ordinance without due process of law.

V.

That the matters charged in the complaint against said Martin Daly, did not constitute a public offense by common law, or under any ordinance of the city of Los Angeles, or under any law of the State of California, or under any statute of the United States.

VI.

That the matters testimony tending to prove which was given before the police court of the city of Los Angeles in the above entitled matter, did not constitute a public offense by the common law or under any ordinance of the city of Los Angeles, or under any law of the State of California, or under any statute of the United States.

VII.

That the said police court of the city of Los Angeles had
87 no jurisdiction to issue a warrant for the arrest of the said Martin Daly.

VIII.

That the said defendant in error, Charles Elton, chief of police of the city of Los Angeles, had no authority to arrest or detain the said plaintiff in error, Martin Daly.

IX.

That the supreme court of the State of California erred in not discharging the said Martin Daly, plaintiff in error, upon the return of the writ of *habeas corpus* herein.

X.

That the supreme court of the State of California erred in discharging the said writ of *habeas corpus* upon the return thereof herein, and in remanding the said petitioner to the custody of the said Charles Elton.

By the record aforesaid, it appears that the judgment of the supreme court aforesaid, was given against the said plaintiff in error, and did discharge the said writ of *habeas corpus* and remand the said Martin Daly, plaintiff in error, to the custody of the said Charles Elton, chief of police of the city of Los Angeles, defendant in error, whereas, by the law of the land the said judgment of the supreme court of the State of California ought to have discharged the said Martin Daly, plaintiff in error, from custody and restored him to his liberty, and the said decision ought to have been against the validity of the said ordinance of the city of Los Angeles adopted on the 3rd day of March, 1902, as aforesaid, and that said ordinance was repugnant to the Constitution of the United States

and void, and the said plaintiff in error prays that the judg-
88 ment and decision of the supreme court of the State of California may be reversed, annulled and altogether held for naught, and that the said supreme court of the State of California may be ordered to enter an order directing the discharge of the said Martin Daly, plaintiff in error, from custody, and that the plaintiff in error may have such other relief as he may be entitled to.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
*Attorneys for Martin Daly, Plaintiff in Error.*

Endorsed: Filed Jul- 21, 1903. Frank C. Jordan, clerk, by J. C. Crooks, deputy.

89 UNITED STATES OF AMERICA, *ss:*

*Citation.*

In the Supreme Court of the State of California.

In the Matter of the Petition of MARTIN DALY, Plaintiff in Error.

To Charles Elton, chief of the police of the city of Los Angeles, respondent, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at the city of Washington in the District of Columbia, within sixty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein Martin Daly is petitioner and plaintiff in error in this action, and you are the respondent and defendant in error therein, to show cause, if any there be, why the judgment rendered against the plaintiff in error as in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Beatty, chief justice of the supreme court of the State of California, this 16th day of July, 1903, and the Independence of the United States the one hundred and twenty-ninth.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

Due service of within citation and receipt of copy of writ of error mentioned therein this day admitted, and a copy of the same
90 served upon us at Los Angeles city, California, this 17th day of July, 1903.

W. B. MATHEWS,
*Attorney for Defendant in Error.*

91 [Endorsed:] R. Crim. No. 930. Supreme court of the State of California In the matter of the petition of Martin

Daly plaintiff in error. Citation. Lynn Helm, Lee, Scott, Bailey & Chase, attorney- for plaintiff Los Angeles, California Filed Jul- 21 1903 Frank C. Jordan, clerk by J. C. Crooks, deputy.

92 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable justices of the supreme court of the State of California, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of California before you or some of you, being the highest court of law or equity of the said State, in which a decision could be had in that certain matter of the petition of Martin Daly for a writ of *habeas corpus*, petitioner and plaintiff in error, and Charles Elton, chief of police of the city of Los Angeles, respondent thereto and defendant in error, wherein was drawn in question the validity of a statute, or an authority exercised under said State, to-wit: an ordinance of the city of Los Angeles, on the ground of their being repugnant to the Constitution, treaties and laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Martin Daly, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly,
93 you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same
J. C. C. at Washington, on the 14th day of September, next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 16th day of July, A. D. 1903.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

SOUTHARD HOFFMAN,
*Clerk U. S. Circuit Court, Northern District of California,*
By W. B. BEAIZLEY,
*Deputy Clerk.*

Allowed by
W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

94 [Endorsed:] R. Crim. No. 930 In the Supreme Court of the United States. In the matter of the application of Martin Daly, plaintiff in error. Original Writ of error. Lynn Helm, Lee, Scott, Bailey & Chase, attorneys for plaintiff in error Los Angeles, California. Filed Jul- 21 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

95 In the Supreme Court of the State of California.

*Ex Parte*
*v.*
MARTIN DALY. } Crim., 930. H. C.

I Frank C. Jordan clerk of the supreme court of the State of California, do hereby certify that the preceeding and annexed papers are true copies of the within stated papers in the cases of *Ex parte* Daly H. C. crim. 930 and a copy of a decision in Dobbins *vs.* City of Los Angeles L. A. 1330, which papers are on file in the office of the clerk of the supreme court of the State of California; these copies with the original citation and original writ of error constituting the papers on appeal to the United States Supreme Court.

The papers and copies referred to are, copy of petition for writ of H. C., minute orders of Feb. 9/03, and July 3/03, stipulation of Feb. 7/03, decision of June 3/03 decision in Dobbins *vs.* City of L. A., of May 29 1903, minute order of July 3/03, petition for writ of error, order allowing writ of error, order fixing bond, bond, recognizance upon writ of error, certificate of final judgment, assignment of errors. Together with the original citation and original writ of error. Copy of writ of *habeas corpus*, and copy of order to issue writ of *habeas corpus*.

Witness my hand and the seal of the court, this 28th day of July, A. D. 1903.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk*,
By J. C. CROOKS, *Deputy*.

Endorsed on cover: File No. 19,052. California supreme court. Term No. 401. Martin Daly, plaintiff in error, *vs.* Charles Elton, chief of police of the city of Los Angeles. Filed August 19th, 1903.

FILE COPY.

NOV 28 1

IN THE

# Supreme Court of the United States.

**Martin Daly,**
*Plaintiff in Error,*
*vs.*
**Charles Elton, Chief of Police of the City of Los Angeles,**
*Defendant in Error.*

No. 1302 108.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

## MOTION TO ADVANCE CAUSE FOR ARGUMENT.

LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,
*Attorneys for Plaintiff in Error.*

SPENCER & PARKER, Law Printers, 256 New High St., Los Angeles, Cal.



IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1942.

No. 408.

**Martin Daly,**
*Plaintiff in Error,*

*vs.*

**Charles Elton, Chief of Police of the City of Los Angeles,**
*Defendant in Error.*

In Error to the Supreme Court of the State of California.

## MOTION TO ADVANCE CAUSE UNDER RULE 26, PAR. 3.

And now comes the said Martin Daly, plaintiff in error, and moves to advance the above entitled cause, in accordance with the provisions of Par. 3, Rule 26 of this court, the said writ of error being to review the final decision of the Supreme Court of the state of California discharging the writ of habeas corpus issued in the matter of the application of Martin Daly for a writ of habeas corpus.

Leon Keller,
Hayes T. Lee,
J. R. Scott,
Edward C. Ballon,
Charles W. Cohn,
*Attorneys for Plaintiff in Error.*

## STATEMENT OF MATTERS INVOLVED AND REASONS FOR APPLICATION.

*May It Please Your Honors*:

This is a writ of error to the Supreme Court of the State of California to review the decision of said Supreme Court of the State of California discharging the writ of habeas corpus issued upon the application of the plaintiff in error, Martin Daly.

The question involved is whether an ordinance of the City of Los Angeles, adopted on the 3rd day of March, 1902, amending an ordinance of August 26th, 1901, in reference to the erection or maintenance of gas works within certain portions of the City of Los Angeles is valid and binding upon the petitioner, an employee of CarolineW. Dobbins, engaged in the business of erecting gas works upon the premises of the said Caroline W. Dobbins, as against their right to conduct a lawful business, and as against the vested rights which they had acquired by virtue of legislative authority, and as depriving petitioner of his liberty, and his employer of her property, without due process of law.

A crime or offense for which an offender can be prosecuted is not created by an invalid law or ordinance. It is claimed by the plaintiff in error that the ordinance in question of the City of Los Angeles, adopted March 3rd, 1902, was an invalid ordinance as against the rights of the petitioner, and the violation thereof by him did not create a public offense.

On the 26th day of August, 1901, the City Council of the City of Los Angeles passed an ordinance entitled "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs" within certain portions of the City of Los Angeles, No. 6663, New Series. The ordi-

nance of March 3rd, 1902, in question, is an amendment thereof.

It was provided in the ordinance that it should be unlawful for any person, firm or corporation to erect or cause to be erected, maintain, or cause to be maintained, any works, establishment or manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas, within the corporate limits of the City of Los Angeles, outside of the district described in the ordinance. The district described in the ordinance included a district having an area of one and a quarter square miles within the city limits of the City of Los Angeles, out of an area of about forty-two square miles. The violation of the ordinance was made a misdemeanor, punishable by fine of not less than $100 or more than $500, or by imprisonment in the city jail for not less than 30 days or more than 100 days, or by both such fine and imprisonment. Every day that said gas works, gas tanks or reservoirs should be maintained in violation of the provisions of said ordinance should be deemed a separate offense within the meaning thereof. After the passage of this ordinance, Mrs. Caroline W. Dobbins, the employer of the petitioner, on the 28th day of September, 1901, for the purpose of erecting gas works for the manufacture, recovery, storage and distribution of gas for the purpose of supplying the inhabitants of the City of Los Angeles with gaslight, purchased within the district within the City of Los Angeles within which it was lawful to erect gas works, as described in the ordinance aforesaid, a piece of land consisting of three lots and a half, which are described in the petition for a writ of habeas corpus herein.

On the first day of November following Mrs. Dobbins applied to the Board of Fire Commissioners of the City of Los Angeles for a permit to erect and maintain gas works upon said premises, under what is known as "The Building Ordi-

nance of the City of Los Angeles," which required that a person desirous of erecting gas works within the City of Los Angeles, should first secure from the Board of Fire Commissioners a permit so to do. This ordinance gave the Board of Fire Commissioners power to grant or refuse such permit.

Upon the hearing of this application of Mrs. Dobbins by the Board of Fire Commissioners, the Board of Fire Commissioners, on November 22nd, 1901, duly granted to Mrs. Dobbins a permit to erect the gas works; and immediately thereafter she commenced the erection of gas works upon the premises which she had purchased as aforesaid within the district within which it was lawful to erect gas works, under the ordinance of August 26th, 1901, and by virtue of this permit granted by the Board of Fire Commissioners, work was prosecuted in the construction of said works, and on said premises there was erected and nearly completed a gas generator, scrubber, and purifier, and Mrs. Dobbins was constructing a water tank and gas holder, on which petitioner was employed; she had expended in the erection of said gas works upwards of $25,000, relying upon the permit given her by the Board of Fire Commissioners, and upon the privileges conferred by the ordinance of August 26th, 1901.

On the 3rd day of March, 1902, while said work was in progress, as aforesaid, the City Council of the City of Los Angeles amended the ordinance of August 26th, 1901, aforesaid, by contracting the limits of the district described therein and cutting out and eliminating from the territory within such limits the premises which had been purchased by Mrs. Dobbins, and upon which she was then erecting the gas works as aforesaid. The amendment was an amendment to Section one thereof, contracting the limits of the district in which it was lawful by implication to erect gas works; all other territory of the City of Los Angeles being thereby ex-

cluded. There were no changes in the ordinance, the penalties for violation thereof remaining the same. This is the ordinance, the validity of which is in question.

On the 6th day of March following, an attempt was made to enforce this ordinance by arresting all the employes of Mrs. Dobbins, including the petitioner. On the 27th day of June, 1902, a hearing was had before the Police Magistrate, which resulted in a judgment of conviction of the said plantiff in error, and this judgment of the Police Court, on appeal, was affirmed by the Superior Court upon a hearing before the Honorable Lucien Shaw, then judge of said Superior Court.

Application was then made for a writ of habeas corpus in this matter to the Supreme Court of the State of California, and upon a hearing thereof, the Supreme Court of the State of California, by a divided Court, sustained the validity of said ordinance of March 3rd, 1902, and discharging the writ, remanded the prisoner to the custody of the said Charles Elton, Chief of Police of the City of Los Angeles, defendant in error to be held by virtue of his conviction by the Police Court of the City of Los Angeles for the alleged violation of said ordinance.

It will appear from an examination of the record in this case, that upon a petition for a rehearing before the Supreme Court of the State of California [Tr. R. fol. 57], that Mr. Justice Van Dyke did not participate therein, and that Chief Justice Beatty, Justice Lorigan, and Justice Henshaw dissented from the order denying the rehearing, Justice McFarland, who wrote the opinion in the Dobbins case, Justice Angellotti and Justice Shaw (Justice Shaw having been elevated to the Supreme Bench of the State of California after having rendered his decision in the Superior Court of Los Angeles county, California, on the appeal of the said

petitoner from the said judgment in the police court of the city of Los Angeles) concurring in the order denying the petition for a rehearing.

From this order denying the petition for rehearing and remanding the prisoner to the custody of said Charles Elton, Chief of Police, defendant in error, a writ of error was by the said plaintiff in error, Martin Daly, sued out to the said Supreme Court of the State of California, and has been duly allowed.

This motion is made to advance this cause for argument.

The decision in this case was made and judgment entered in the Supreme Court of the State of California upon the grounds set forth in the opinion rendered at the same time in the case of Dobbins v. the City of Los Angeles, in which case the validity of the ordinance in question was directly involved, and it was there held that the same was valid. On the authority of that case, the prayer of the petitioner, Martin Daly, was denied. The case of Dobbins v. the City of Los Angeles, referred to by the Supreme Court of the State of California in their decision in the matter of the application of Martin Daly for a writ of habeas corpus is also pending before this court on writ of error to the Supreme Court of the State of California (October term, 1903, No. 400), from the decision rendered therein, and as the same question is involved in that case as in this case, a motion will be made in that case that this case of Martin Daly, plaintiff in error, v. Charles Elton, Chief of Police of the City of Los Angeles, defendant in error, and the said Dobbins case be heard together, and argued as one case. [Rule 26, Par. 8.]

This case should be advanced and have precedence of other cases on the docket of this court.

It comes within the provisions of Section 710, Revised Statutes. "Cases on writ of error to review the judgment

of the State Court in any criminal case shall have precedence on the docket of the Supreme Court, of all cases to which the Government of the United States is not a party, excepting only such cases as the court, in its discretion, may decide to be of public importance."

This case is also within the rule of this court [Rule 26, Par. 3], that criminal cases may be advanced by leave of court on motion of either party. This cause is a criminal case within the statute and rule above quoted.

It is respectfully suggested that this case be set down for hearing as soon as possible after the 15th of January, 1904.

Respectfully submitted.

LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,
*Attorneys for Plaintiff in Error.*

Received a copy of the foregoing motion and statement of matters involved, with reasons for the application, this .....day of November, 1903; and consent is hereby given that said application may be heard by the Supreme Court on Monday, the .....day of December, 1903, at the opening of court.

LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,
*Attorneys for Plaintiff in Error.*

ALBERT CRUTCHER,
W. B. MATHEWS,
*City Attorney.*
*Attorneys for Defendant in Error.*



FILED OCT 1 1904
JAMES H. McKENNEY, Clerk

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1904.**

No. 108.

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MARTIN DALY, PLAINTIFF IN ERROR,

*vs.*

CHARLES ELTON, CHIEF OF POLICE OF THE CITY OF LOS ANGELES.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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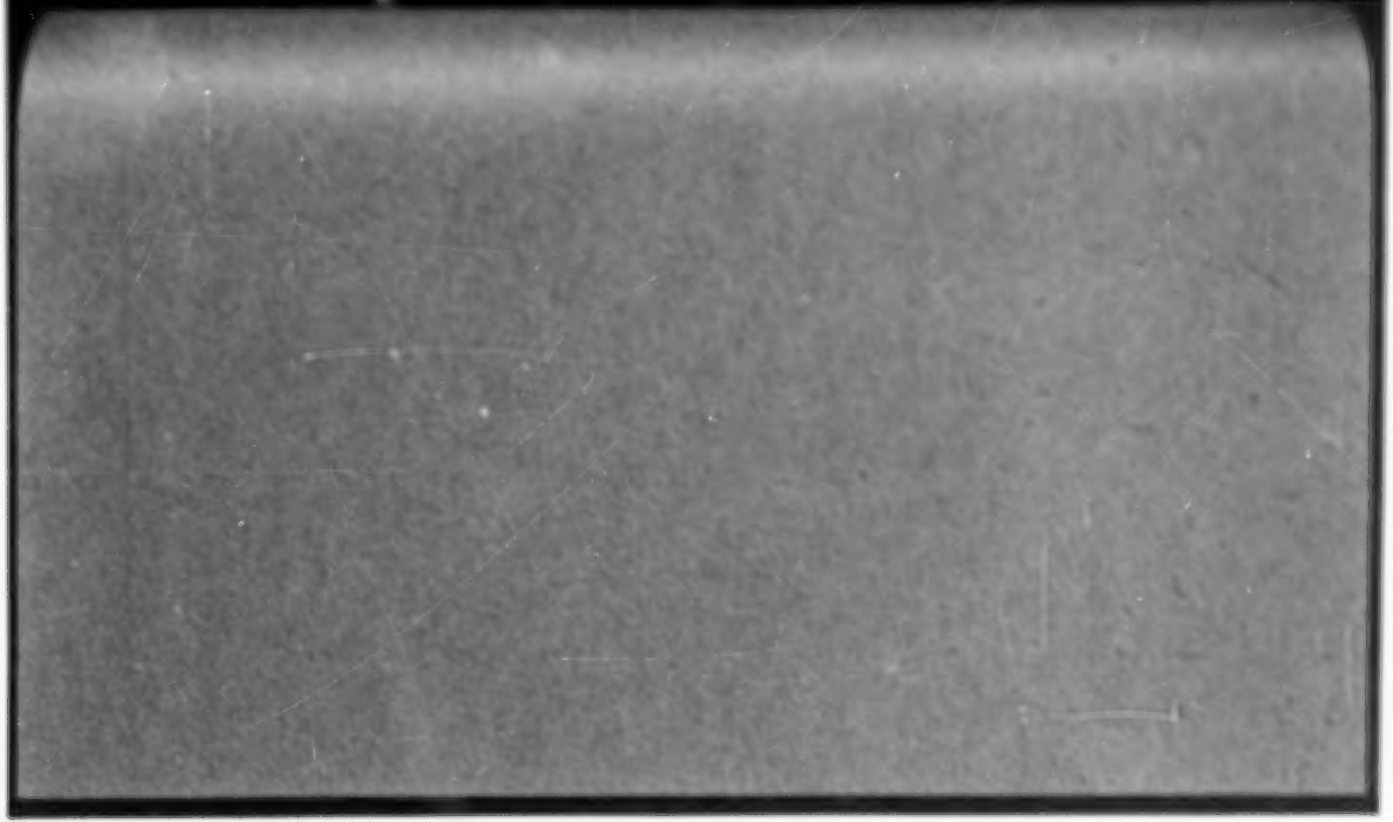
## BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

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LYNN HELM,
HENRY T. LEE,
J. R. SCOTT,
EDWARD C. BAILEY,
CHARLES W. CHASE,
*Attorneys for Plaintiff in Error.*

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(19,052.)



# In the Supreme Court of the United States.

## OCTOBER TERM, 1904.

CAROLINE W. DOBBINS,
*Plaintiff in Error,*
vs.
CITY OF LOS ANGELES,
*Defendant in Error.*

MARTIN DALY,
*Plaintiff in Error,*
vs.
CHARLES ELTON, Chief of Police of the City of Los Angeles,
*Defendant in Error.*

} No. [illegible]

In Error to the Supreme Court of the State of California.

## BRIEF OF PLAINTIFF IN ERROR.

Note.—As these writs of error have been consolidated and submitted together to the Court for argument, a similar brief has been filed in each case. For convenience, the list of said cases will be referred to in this brief as the "Dobbins" case, and the other as the "Daly" case.

MAY IT PLEASE YOUR HONORS:

There are two general questions to be decided in these cases, viz:

First, whether the ordinance of the City of Los Angeles, adopted on the 26th day of August, 1901, and the amended ordinance of March 3rd, 1902, are valid and binding upon the plaintiff in error, Caroline W. Dobbins, as against her right to conduct a lawful business of erecting gas works and manufacturing gas, or as against the vested rights which she had acquired in reference thereto by virtue of legislative authority, and as against the rights of the plaintiff in error, Martin Daly, as the employee of said Caroline W. Dobbins, engaged in erecting the said gas works for the said plaintiff in error, Caroline W. Dobbins, as being unreasonable and oppressive and in violation of constitutional rights; and

Second, whether a court of equity has jurisdiction to restrain by injunction a municipality from instituting criminal proceedings, when such prosecutions are threatened under color of an invalid ordinance for the purpose of compelling the relinquishment of a property right.

These questions presented by the writs of error herein were attempted to be presented to this Court in the case of *Davis & Farnum Manufacturing Company v. The City of Los Angeles*, 189 U. S., 207; but this Court held, in that case, that as Mrs. Dobbins, the owner of the land and the proposed gas works, was not the plaintiff in that case, nor the Valley Gas & Fuel Company, with which she had made a contract to erect the works, but a sub-contractor, which had made a contract with the Valley Gas & Fuel Company to erect for them and upon the premises to be designated by Mrs. Dobbins, a tank and gas holder, that the plaintiff could not show that it suffered an irreparable loss by the interference of the City, and that the appellant therein had

shown no legal interest in the litigation and no lack of a complete and adequate remedy at law, and therefore that the bill in that case was properly dismissed by the Circuit Court.

The questions now presented to this Court by the writs of error in these cases are presented directly by Caroline W. Dobbins, the owner of the land and the proposed gas works, in a suit to enjoin the enforcement of an unconstitutional ordinance, and by Martin Daly, one of the employes at work upon such gas works, arrested for a violation of the alleged ordinance adopted by the City of Los Angeles, the same ordinance that was sought to be questioned in the case of *Davis & Farnum Manufacturing Company vs. the City of Los Angeles, supra.*

We shall discuss these questions in the order of their statement, for the reason that the question as to the validity of the ordinance above referred to, adopted by the City of Los Angeles, and hereinafter set forth in full, is the question presented directly in both of these cases; in the case of Caroline W. Dobbins, plaintiff in error, by the action brought to enjoin the City of Los Angeles, the defendant in error, from enforcing the ordinance, on the ground that such ordinances are invalid and are being enforced for the purpose of compelling the relinquishment of the property rights of the said plaintiff in error; in the case of Martin Daly, petitioner, upon his petition for a writ of habeas corpus, to be discharged from arrest for the alleged violation of said ordinances.

We shall discuss these questions in the order of their statement for the further reason that if the ordinances are invalid and interfere with the right of the plaintiff in error Mrs. Dobbins, to conduct a lawful business, or with her vested rights which she has acquired by virtue of legislative authority, it will follow that a court of equity has juris-

diction to restrain by injunction the defendant municipality from instituting and prosecuting the criminal proceedings threatened or instituted under color of such invalid ordinances for the purpose of compelling the relinquishment of the property rights of the said plaintiff in error. A crime or offense for which an offender can be prosecuted is not created by an invalid law or ordinance. Every arrest under such an ordinance is a lawless and forcible trespass, and a court of equity will restrain a trespasser from coercing submission to lawless demands by prosecutions for alleged crimes before courts which have no jurisdiction to try the accusation.

## STATEMENT OF THE CASE.

The complaint filed in the Dobbins case March 10, 1902, alleges, that on the 26th day of August, 1901, the City Council of the City of Los Angeles passed an ordinance known as Ordinance No. 6663, of which the ordinance of March 3rd, 1902, is an amendment. The ordinance of August 26th, 1901, numbered 6663, is as follows:

> An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles.
>
> The Mayor and Council of the City of Los Angeles do ordain as follows:
>
> Section 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the City of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the City of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street, to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence easterly along the center line of San Fernando street to the center line of the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

Section 2. Any person, firm or corporation who shall violate any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment in the City Jail for not less than Thirty (30)

days nor more than One Hundred (100) days, or by both such fine and imprisonment. Every day that such gas works, tank or reservoir is maintained in violation of the provisions of this Ordinance, shall be deemed a seperate offense within the meaning of this Ordinance.

Section 3. Ordinance No. 174, approved July 2nd, 1885, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. The City Clerk shall certify to the passage of this Ordinance and cause the same to be published once in The Los Angeles Daily Journal and thereupon and thereafter it shall take effect and be in force.

Specifically the ordinance provides that it is unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the City of Los Angeles outside of the district described in the ordinance. That district as originally laid out, included the district bounded on the north by San Fernando street, on the east by the Los Angeles river, making an apex at the junction of San Fernando street and the Los Angeles river, and on the south by the boundary of the city limits. The western boundary was an irregular line, and as we claim, was laid out and described for the purpose of protecting the existing works of the Los Angeles Lighting Company, and was bounded and designated without regard to any geographical or natural lines, but simply described for the purpose of running around and including the present gas works of the Los Angeles Lighting Company in the City of Los Angeles. The violation of this ordinance was made a misdemeanor, punishable by fine or imprisonment, or both, and

every day that such gas works, tank or reservoir should be maintained in violation of the purpose of said ordinance, should be deemed a separate offense within the meaning thereof.

On or about the first day of August, 1901, the plaintiff in error, Caroline W. Dobbins, contemplating the erection of gas works for the purpose of the manufacture, recovery, storage and distribution of gas, for the purpose of supplying the inhabitants of the City of Los Angeles and the inhabitants of cities neighboring and adjacent thereto, caused to be organized a corporation known as the Valley Gas & Fuel Company, which said company was, on the 8th day of August, 1901, duly organized under and by virtue of the laws of the State of California. After the passage of the ordinance of August 26th, 1901, about the first day of September, 1901, the plaintiff in error, Caroline W. Dobbins, made and entered into a contract with the Valley Gas and Fuel Company to build, construct and erect for her on certain premises to be designated by her, certain gas works, including coke ovens and all things necessary for the manufacture, recovery, storage and distribution of gas, said works in themselves consisting of gas generators, gas washers and scrubbers, purifiers and gas holder, and tank, the same to be all completed and to be delivered to said plaintiff in error on or before the first day of January, 1902.

To carry out its undertaking, subsequently the Valley Gas and Fuel Company entered into divers and sundry contracts with divers and sundry persons to do the work necessary for the erection of said coke ovens and gas works.

On the 28th day of September, 1901, the said plaintiff in error, Caroline W. Dobbins, for the purpose of erecting gas works for the manufacture, recovery, storage and distribution of gas for the purpose of supplying the inhabi-

tants of the City of Los Angeles with gas, purchased within the district within the City of Los Angeles within which it was lawful under the ordinance of August 26th, 1901, above set forth, to erect gas works, a tract of land consisting of three lots and a half, and known as lots sixteen, seventeen, eighteen and part of lot fifteen of block two of Pomeroy & Mills' subdivison of the Hollenbeck Tract, described in the bill of complaint filed herein.

On the first day of November following, Mrs. Dobbins applied to the Board of Fire Commissioners of the City of Los Angeles for a permit to erect and maintain gas works on said premises under what is known as the "Building Ordinance of the City of Los Angeles," which required that the person desiring to erect gas works within the City of Los Angeles should first secure from the Board of Fire Commissioners a permit so to do. This ordinance gave the Fire Commissioners, upon a hearing of all parties interested, authority to grant or refuse such permit.

Upon the application of Mrs. Dobbins to the Board of Fire Commissioners for such a permit, notices were properly given of the hearing in accordance with the ordinance to all persons interested, and on the 8th day of November, 1901, a hearing was had before the Fire Commissioners. The Board of Fire Commissioners gave an opportunity to all persons interested to be heard, and having taken the matter under advisement, afterwards, on the 22nd day of November, 1901, the application of the said plaintiff in error, Caroline W. Dobbins, for permission to erect and maintain a gas works was granted.

Mrs. Dobbins, the plaintiff in error, having fully complied with all the ordinances then in force in the City of Los Angeles in reference to the erection of gas works, both as to the place of their erection and as to the securing of a permit from the proper authorities therefor, commenced

the construction of the gas works upon the premises which she had purchased in the district in which it was lawful to erect gas works under the ordinance of August 26th, 1901, and by virtue of the permit granted by the Board of Fire Commissioners. Contracts were immediately let with certain persons, and especially for the laying of foundations for the water tank, scrubbers and generators. Such foundations were laid at once at a cost of upwards of twenty-five hundred dollars, and as the complaint shows, were of great strength and costly materials, and if the same should have to be destroyed or removed would cause irreparable damage or injury to the plaintiff in error, Mrs. Dobbins, and to her contractors.

After the material had all been placed upon the ground for the erection of these foundations, and the foundations were nearly completed, on the 25th day of November, 1901, the City Council of the City of Los Angeles attempted to pass a purported ordinance entitled "An ordinance amending ordinance number 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the said City of Los Angeles, approved August 26th, 1901, by amending Section one of said ordinance.'" Said purported ordinance is in words and figures as follows:

ORDINANCE NO. 6779.

(New Series.)

An Ordinance amending Ordinance No. 6663, New Series, entitled "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles," approved August 26, 1901, by amending Section 1, of said Ordinance.

The Mayor and Council of the City of Los Angeles do ordain as follows:

Section 1. That Section 1 of Ordinance No. 6663, New Series, entitled "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the City of Los Angeles," approved August 26th, 1901, be and the same is hereby amended to read as follows:

Section 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the City of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the City of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence

northerly along the center line of Alameda street to the center line of San Fernando street; thence southeasterly following the line of the Southern Pacific Railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

Section 2. The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published once in The Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

By this ordinance an attempt was made to cut out and eliminate from the territory described in the ordinance of August 26th, 1901, the land that had been purchased by Mrs. Dobbins, and being the premises on which she was then erecting the gas works under her permit from the Board of Fire Commisioners.

Nothing was done, however, in reference to the enforcement of this alleged ordinance of November 25th, 1902, until abopt the 27th day of February, 1902. In the meantime, the plaintiff in error, Caroline W. Dobbins, through the said corporation, the Valley Gas & Fuel Company, under the contract of the said plaintiff in error, with said company for the erection of said gas works, was peaceably and lawfully engaged in the erection of the gas works upon the premises above described, and the Valley Gas & Fuel Company had for the said plaintiff in error erected upon the said premises complete the gas generator, and also the scrubbers and washers used in the manufacture of gas; the generators and scrubbers were all complete, except a connection therewith by a pipe necesssary therefor of about six feet in length and about twelve inches in diameter; the water tank and gas holder was commenced upon the foundations prepared

therefor by the Valley Gas & Fuel Company, and was in process of construction without interruption, by Davis & Farnum Manufacturing Company, a corporation of the State of Massachusetts, in the business of manufacturing gas holders and gas tanks, under a contract with the Valley Gas & Fuel Company for the said plaintiff in error. The water tank was to be 62 feet in diameter by 20 feet 9 inches in height, and was to have a capacity of 467,700 gallons of water, and was to be made of sheet steel and iron and to have steel bottoms, thoroughly riveted and made water tight, having a textile strength of 62,000 pounds to the square foot. Inside of the said water tank was to be erected a steel gas holder with a capacity of 100,000 cubic feet of gas, consisting of two lifts wtih proper curbs and cups, each lift being made of steel and to be constructed in a good workmanlike manner, at a cost of $13,685. All the iron and steel used in the construction of the tank and gas holder were upon the ground at the time of the filing of the complaint herein in the Superior Court of Los Angeles County, and ready to be put in place, and the tank was already erected to a height of 15 feet 9 inches, and if the contractors engaged in erecting said work had been allowed to complete said tank they would in the course of a week or ten days have had the same fully completed and within six weeks have had the gas holder completed and put in place ready to be delivered to the said plaintiff in error. It is averred that if the work of erecting said works could be continued peaceably and without interference from the said defendant in error, the City of Los Angeles, that the same would be completed and ready for operation within the period of about six weeks from the date of the filing of the said complaint.

While the plaintiff in error, Caroline W. Dobbins and her contractors and sub-contractors were lawfully and

peaceably engaged in the erection of said gas works and said gas holder, up to and including the 25th day of February, 1902, on the 25th day of February, 1902, the said defendant in error, the City of Los Angeles, combining and confederating with one James R. C. Burton, and with divers and sundry persons to the plaintiff in error unknown, in the name of the people of the State of California, instituted a proceeding in the police court of the City of Los Angeles against F. A. Smith and Thaddeus Lowe, then in the employ of the Valley Gas & Fuel Company, in the erection of said works on the premises of the said plaintiff in error, Caroline W. Dobbins, as hereinbefore described, charging the said F. A. Smith and the said Thaddeus Lowe with having committed a misdemeanor in that they did wilfully and unlawfully erect and cause to be erected certain works, establishments and manufactories for the manufacture of gas, and a certain reservoir and receptacle for the storage of gas within the corporate limits of the City of Los Angeles, attempted to be described in the purported ordinance attempted to be passed by the said Council of the City of Los Angeles on the 25th day of November, 1901, and last hereinbefore set forth; and thereupon, upon the complaint filed in the said proceeding filed in the said police court of the City of Los Angeles on the 25th day of February, 1902, caused the arrest and detention of said Thaddeus Lowe and said F. A. Smith, upon a warrant issued by the Judge of said police court of the City of Los Angeles for the alleged violation of the said city ordinance.

On the first day of March, 1902, the City of Los Angeles again combining and confederating with the said James R. C. Burton, and with divers and sundry persons to the said plaintiff in error unknown, in the name of the people of the State of California, instituted another pro-

cuting in the police court of the City of Los Angeles against the said F. A. Smith, Thaddeus Lowe and four other persons then and there engaged upon said premises in the employ of the said Valley Gas & Fuel Company, or of other persons engaged in the erection of said gas works on the premises of the plaintiff in error, Caroline W. Dahlman, hereinbefore described, charging them, as in the last complaint described; and on the first day of March, 1901, caused the arrest and detention of the said F. A. Smith, Thaddeus Lowe and the four other persons above mentioned upon a warrant issued by the Judge of said Police Court of the City of Los Angeles for the violation of said ordinance.

Afterwards, on the first day of March, 1901, the said defendant, the City of Los Angeles, again combining and confederating with the said James R. C. Burton, and with divers and sundry other persons to the plaintiff in error unknown, in the name of the people of the State of California, instituted another proceeding in the Police Court of the City of Los Angeles against the said F. A. Smith, Thaddeus Lowe and fourteen other persons engaged in the erection of said gas works for the said plaintiff in error, Caroline W. Dahlman, or her contractors on the premises of the said plaintiff in error hereinbefore described in carrying out the contracts entered into between the said plaintiff in error and the said Valley Gas & Fuel Company for the erection of the gas works aforesaid, charging the said persons in said complaint named with having committed a misdemeanor, as in said last complaint alleged; and thereupon, on the 1st day of March, 1901, caused the arrest and detention of the said defendants in said complaint mentioned, sixteen persons in all, upon a warrant issued by the Judge of said Police Court of the City of Los An-

prise for the alleged violation of the said alleged city ordinance but heretofore set forth.

The arrest and detention of the said employee of the said plaintiff in error, Carolina M. Dobbins, and her subsequent conviction, pursuant [illegible] and contemplated the work of the said plaintiff in error and all its employees in erecting said gas works and was in violation of the rights of the said plaintiff in [illegible] as aforesaid under and by virtue of her contract with [illegible] Gas & Fuel Company, and also in violation of the rights granted to the said plaintiff in error by the City of Los Angeles on the 22d day of November 1886.

On the 3rd day of March, 1890, the City of Los Angeles, recognizing the invalidity of the alleged ordinance attempted to be passed and adopted by the City Council of the City of Los Angeles November 23rd, 1889, as hereinbefore set forth, attempted by its Mayor and Council to pass another purported ordinance entitled "An ordinance amending ordinance number 8000, and never entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs, within certain portions of the City of Los Angeles" approved August 23rd, 1889, by amending section one of said ordinance" which said purported ordinance is in words and figures as follows:

[illegible] [illegible] [illegible]

([illegible])

"An Ordinance amending Ordinance No. [illegible] [illegible] entitled "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles" approved August 23d, 1889, by amending Section 1 of said Ordinance.

The Mayor and Council of the City of Los Angeles do ordain as follows:

Section 1. That Section 1 of Ordinance No. 6663, New Series, entitled, "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles," approved August 26, 1901, be and the same is hereby amended to read as follows:

Section 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the City of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the City of Los Angeles; thence westerly along the south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue, and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence

westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific Railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue, is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

Section 2. The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

Plaintiff in error, Caroline W. Dobbins, was endeavoring in all respects, as she lawfully might, to erect and have erected upon the premises hereinbefore described the said gas works, but while the men in the employ of the said plaintiff in error and her said sub-contractors engaged upon the contracts above described were engaged in the erection of said gas works, the City of Los Angeles on the 6th day of March, 1902, again combining and confederating with the said James R. C. Burton and with divers and sundry other persons to the said plaintiffs in error unknown, in the name of the people of the State of California, instituted another proceeding in the Police Court of the City of Los Angeles against the said Thaddeus Lowe, F. A. Smith, the said plaintiff in error, Martin Daly and twenty-one other persons, employes engaged in the erection of said gas works upon the premises aforesaid, charging said F. A. Smith,

the said Thaddeus Lowe and the said plaintiff in error, Martin Daly, and the said twenty-one other persons with having committed a misdemeanor, in that they did wilfully and unlawfully erect or cause to be erected, maintain or cause to be maintained, certain works, establishments and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of the said City of Los Angeles, and outside of the limits of the said alleged district described in said purported ordinance attempted to be passed by the City Council of the City of Los Angeles on the 3rd day of March, 1902, as hereinbefore set forth; and thereupon, upon the complaint filed in said proceeding in said Police Court of the City of Los Angeles, on the 6th day of March, 1902, caused the arrest of the said Thaddeus Lowe, F. A. Smith, the said plaintiff in error, Martin Daly, and the twenty-one other persons above referred to, upon a warrant issued by the Judge of said Police Court of the City of Los Angeles for the alleged violation of the said alleged ordinance.

The complaint filed by Caroline W. Dobbins alleges that the said City of Los Angeles, continuing to combine and confederate with the said James R. C. Burton and with divers and sundry persons to said plaintiff in error unknown, threatens in the name of the people of the State of California, to institute other proceedings in the Police Court of the City of Los Angeles against the employes of the said plaintiff in error under said contractors engaged in the erection of said gas works on the premises of the said plaintiff in error, and threatens to charge them and each of them with having committed other misdemeanors, charging them and each of them with wilfully and unlawfully erecting or causing to be erected, maintaining or causing to be maintained, works, establishments or manufactories for the manufacture of gas, or tanks, reservoirs or receptacles for the

storage of gas within the corporate limits of the City of Los Angeles, and outside of the limits described in said purported ordinance, attempted to be passed by the City Council of the City of Los Angeles on the 3rd day of March, 1902, as hereinbefore set forth; and that said City of Los Angeles threatens to cause the arrest and detention of said employes engaged in the erection of said gas works and to imprison and confine them for alleged violation of the said alleged city ordinance; and the said City of Los Angeles threatens that if the said plaintiff in error, Caroline W. Dobbins, continues to carry on her said work in which she is engaged in completing the said gas works and manufactory for the manufacture of gas, that it will arrest all persons employed and engaged in said work until it will have stopped the construction of said gas works and compelled the said plaintiff in error to desist from the erection thereof.

Plaintiff in error, Caroline O. Dobbins, averred that unless the defendant, the City of Los Angeles be restrained and enjoined by said Superior Court from executing its said threats, that the said City of Los Angeles will arrest and continue to arrest the men employed in the erection of said gas works on the premises of the said plaintiff in error until said work is stopped, and the said plaintiff in error is unable to complete the said undertakings entered into by her in the erection of said gas works as aforesaid.

In her complaint, plaintiff in error, Caroline W. Dobbins, alleges that ever since the inception of the said enterprise so instituted, commenced and undertaken by the said plaintiff in error, the said defendant, the City of Los Angeles, and the municipal authorities thereof, its officers and agents, have continuously thrown obstacles in the way of the successful completion of the said enterprise of the said

plaintiff in error and have continuously and systematically attempted to thwart and frustrate the plans of the said plaintiff in error, and have interfered with and interrupted her said work in various portions thereof; that immediately after the organization, at the instance of and for the benefit of the said plaintiff in error, Caroline W. Dobbins, of the said Valley Gas & Fuel Company, the said City Council of the City of Los Angeles attempted to pass and adopt the Ordinance number 6663, New Series, which was adopted on the 26th day of August, 1901, as aforesaid, entitled "An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles;" and afterwards, when the said plaintiff in error had purchased, within the district prescribed by the said ordinance last hereinbefore referred to, the land upon which she proposed to erect the said gas works, and when, on or about the 28th day of September, 1901, an application had been made to the Board of Fire Commissioners of the City of Los Angeles for a permit to erect gas works upon said premises, the said City Council considered and deliberated upon an ordinance then and there introduced in said City Council of the City of Los Angeles, entitled "An Ordinance amending Ordinance No. 6663, New Series, entitled 'An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles,' approved August 26, 1901, by amending Section 1 of said ordinance," the object of said ordinance being to further restrict the limits of the district in the City of Los Angeles in which it was lawful to erect and maintain gas works, by which said ordinance it was proposed to eliminate from the district theretofore described in the alleged ordinance adopted on the 26th of August, 1901, all that portion of said district lying between San Fernando street on the north

and west, Sotello street and Leroy street on the south and west, and the Los Angeles river on the east, in which was particularly situated the land owned and purchased by the said plaintiff in error as aforesaid, and upon which it was proposed by the said plaintiff in error to erect the said gas works; that such proceedings were had in the said City Council of the City of Los Angeles on the presentation and consideration of said ordinance that the same was by the said City Council referred to the Committee on Legislation of said City Council, and thereupon the hearing upon the application theretofore made to the said Board of Fire Commissioners was suspended, and the same continued entirely suspended by the said Board of Fire Commissioners while the said matter was pending before the said Committee on Legislation of the said City Council of the City of Los Angeles, and for upwards of two weeks; that during the time that said application for a permit to erect gas works upon the premises of the said plaintiff in error above referred to was still pending before the said Board of Fire Commissioners as aforesaid, and while the question of the adoption of the said proposed ordinance was still pending before the said Legislative Committee of the said City Council, the said Board of Fire Commissioners were induced to consider and did consider and agree to the adoption of a certain rule and regulation in reference to applications for permits to erect gas works, which said rule and regulation is hereinafter referred to; that after such determination of the said Board of Fire Commissioners to adopt said rule and regulation hereinafter referred to, said proposed ordinance proposing to restrict the limits of said district in which it was lawful to erect gas works as aforesaid came before the said City Council of the City of Los Angeles on the report of the said Legislative Committee, the said Legislative Committee having reported against the adoption

of the said ordinance; and thereupon, at the next meeting of the said Board of Fire Commissioners of the City of Los Angeles the said rule and regulation hereinafter referred to, having theretofore been considered by the said Board of Fire Commissioners as aforesaid, was, at the meeting of the Board of Fire Commissioners on or about the 25th day of October, 1901, adopted, in words and figures as follows:

"Whereas, applications are on file with this Board for permission to erect gas manufacturing plants at different points within the district to which said plants are limited; and, whereas, a very great majority of the property owners living in the vicinity of locations for which applications are made protest against the granting of permits; and, whereas, this Board is satisfied that the respective applicants for permission to build are attempting to engage in the business of the distribution of gas for general purposes, including its use for fuel and power, without first procuring a franchise from the city for said right; now, therefore, be it resolved, that all applications now pending before this Board for permission to erect gas manufacturing plants are hereby denied; that, hereafter, in all cases where an application for permission to erect a gas manufacturing plant shall be made to this commission, the said application shall state whether or not the gas so manufactured is to be supplied to the inhabitants of the City of Los Angeles for illuminating purposes only. Said application shall be verified by the oath of the applicant, and in case it shall appear to the commission that no proper ground exists for the denial of the application, and that said gas is to be used for illuminating purposes only, the same shall be forthwith granted. But in case it shall appear that the gas is to be furnished for general purposes, such as fuel, power, etc., then the applicant therefor must procure a franchise from the City of Los Angeles to distribute gas before his said application will be finally granted by this commission."

The effect of which rule was to dismiss and deny the application theretofore made for permission to erect gas works

upon the premises of the said plaintiff in error as hereinbefore set forth; that afterwards, on the 1st day of November, 1901, the said plaintiff in error, Caroline W. Dobbins, having complied with all the rules and regulations of the said Board of Fire Commissioners, made an application on her own behalf for a permit to erect gas works upon said premises hereinbefore described, and afterwards, on the 22nd day of November, 1901, the said Board of Fire Commissioners granted the said permit to the said plaintiff in error as hereinbefore set forth, and thereupon the said City Council of the City of Los Angeles, as soon thereafter as they met, to-wit, on the 25th day of November, 1901, attempted to pass and adopt the ordinance No. 6779, New Series, entitled "An Ordinance amending Ordinance No. 6663, New Series, entitled 'An Ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles,' approved August 26, 1901, by amending section 1 of said ordinance," as hereinbefore set forth; that in addition to the acts of the said municipal authorities of the said City of Los Angeles hereinbefore set forth, on or about the 7th day of October, 1901, the said City Council of the City of Los Angeles attempted to pass a certain other purported ordinance known as Ordinance No. 6726, New Series, entitled, "An Ordinance prohibiting the use of any public street or thoroughfare in the City of Los Angeles for the purpose of laying down or maintaining therein any pipe, conduit or connections therewith without a franchise," wherein and whereby the said City of Los Angeles attempted to ordain that it should be unlawful for any person, firm or corporation to lay down any pipe, conduit or connections therewith in any public street or thoroughfare in the City of Los Angeles for the purpose of supplying said city or its inhabitants with fresh water or with gas used exclusively for illu-

mination or with other illuminating light, without first obtaining a permit from the Superintendent of Streets to make the necessary excavations therefor, and that any person, firm or corporation desiring to obtain such permit should file with the Superintendent of Streets an application therefor in writing, setting forth the public streets or thoroughfares and the particular portions thereof which it was desired to excavate, the size and character of the excavation to be made, and specifically the purpose for which the pipe, conduit or connection therewith was to be used, whether for water, gas or electricity, and if for gas or electricity that said gas or electricity was to be supplied solely to said city or its inhabitants to be used exclusively for illumination, and that said application must be verified by the oath of such person, or by the oath of a member of such firm or by the oath of the president and secretary of such corporation as the case may be; that thereafter, when the said plaintiff in error, Caroline W. Dobbins, desired to make an application for permit to excavate the streets of the City of Los Angeles for the purpose of laying pipes in order to distribute to the citizens of the City of Los Angeles gas by her to be manufactured, for the purpose of supplying them with artificial light, the Superintendent of Streets of the City of Los Angeles unlawfully required of the said plaintiff in error an application therefor in writing, setting forth the public streets and thoroughfares, and the particular portions thereof, which it was desired by the said plaintiff in error to excavate, the size and character of the excavations to be made, and specifying the purpose for which the pipe, conduit or connections therewith was to be used, and that said gas was to be supplied solely for the city or its inhabitants to be used exclusively for illumination, and required that the said application should be verified by the oath of the said plaintiff in error, all of which requirements were unlawful

and were for the purpose of annoying, harassing, impeding, hindering and delaying the said plaintiff in error in her attempt to carry out successfully the lawful enterprise in which she was engaged; that thereafter, in addition to the adoption of the said purported ordinance so attempted to be adopted by the City Council of the City of Los Angeles, and in addition to the acts of the said Superintendent of Streets of the City of Los Angeles hereinbefore set forth, the said City of Los Angeles, through its City Attorney, prosecuted the proceedings instituted by the said James R. C. Burton hereinbefore set forth for the arrest of and detention of the men employed in the construction and erection of the said gas works of the said plaintiff in error; all of which acts and doings on the part of the City of Los Angeles, its municipal authorities, officers and agents, as set forth in said complaint the said plaintiff in error charged and averred were for the purpose of hindering, harassing, impeding, delaying and frustrating the efforts and attempts of the said plaintiff in error to carry out the lawful business and enterprise so undertaken by her as aforesaid, and were instituted and prosecuted for the purpose of compelling the said plaintiff in error to stop and abandon the further prosecution of said enterprise.

It is alleged in said complaint upon information and belief that the said defendant, the City of Los Angeles and the municipal authorities, officers and employees thereof were in their acts and doings hereinbefore set forth wilfully and unlawfully instigated, advised and controlled by the officers, attorneys, agents and employees of the Los Angeles Lighting Company, a corporation organized under the laws of the State of California, engaged in the manufacture and supplying of gas in the City of Los Angeles, and which said company has, for upwards of ten years last past, enjoyed a monopoly of the gas business in the said City of Los Angeles;

that said Los Angeles Lighting Company, through its officers, attorneys, agents and employees, has had sufficient influence with the municipal government of the said City of Los Angeles, and with its officers, to bring about the passage and adoption of the alleged ordinances hereinbefore set forth which the said City Council of the City of Los Angeles has attempted to adopt since the commencement of the enterprise undertaken by the said plaintiff in error, and has had sufficient influence with the officers and employees of the said City of Los Angeles to compel them to enforce and attempt to enforce the alleged ordinances so attempted to be passed and adopted by the City Council of Los Angeles as aforesaid against the said plaintiff in error, her agents, contractors and employees engaged in the erection of said gas works and the laying of pipes in the streets of the City of Los Angeles on behalf of the said plaintiff in error in enabling her to carry out the enterprise aforesaid; that all of said ordinances attempted to be passed and adopted by the City Council of the City of Los Angeles restricting the limits of the City of Los Angeles in which it was lawful to erect gas works as prescribed by the ordinance adopted by the City Council of the City of Los Angeles on the 26th day of August, 1901, herein set forth, were prepared by the attorneys and agents of the said Los Angeles Lighting Company and by them presented to the members of the City Council of the City of Los Angeles for adoption; that before the attempted adoption of the said alleged ordinance of the 25th day of November, 1901, hereinbefore set forth, the said Los Angeles Lighting Company, through its attorneys and agents, in order to comply with the rules and regulations of the said City Council that before the passage of any ordinance a printed copy thereof should be furnished to each of the members of the City Council of the said City of Los Angeles, caused to be printed and distributed to the members of the

City Council of the City of Los Angeles, printed copies of the proposed ordinance, which the said City Council afterwards, on the 25th day of November, 1901, attempted to adopt and pass as aforesaid; that the said Street Superintendent of the City of Los Angeles, under the restrictions purporting to be placed upon him by the City Council of the City of Los Angeles by the attempted adoption of the alleged ordinance number 6726, New Series, last herein referred to, being compelled to demand of the said plaintiff in error a verified application for a permit to open the streets of the City of Los Angeles for the purpose of laying pipes therein for the purpose of distributing gas by her to be manufactured, contrary to the rights of the said plaintiff in error, to use the streets of the said City of Los Angeles for the purpose of laying pipes therein, as guaranteed to her by section 19, article XI, of the constitution of the State of California, thereupon the said Los Angeles Lighting Company its agents and employees, caused to be and had printed and caused to be delivered by its agents to the said Superintendent of Streets of the City of Los Angeles, printed blanks prepared by their attorneys for applications for permits to excavate in public streets of the City of Los Angeles; that the said Los Angeles Lighting Company, its officers and agents, combining and confederating with the said James R. C. Burton and with divers and sundry persons to the said plaintiff in error unknown, have compelled the City Attorney of the City of Los Angeles and his deputies and assistants to prepare the complaints in the proceedings instituted by the said James R. C. Burton in the name of the People of the State of California against the employees of the said plaintiff in error, Caroline W. Dobbins, and her said contractors engaged in the erection of the said gas works as hereinbefore set forth, and have induced the filing of said complaints and the issuance of the warrants thereon

and the arrest and imprisonment and detention by the officers of the City of Los Angeles of the said employes; and that the said Los Angeles Lighting Company, by its officers, attorneys, agents and employes, has boasted and threatened that if the said prosecutions so instituted by the said James R. C. Burton against the employes of the said plaintiff in error and her said contractors shall fail, and if the said ordinances hereinbefore set forth shall be declared void and invalid, they will, by their influence and their efforts, secure the passage by the City Council of the City of Los Angeles of an ordinance regulating the gas business in the City of Los Angeles and requiring the payment of a license, which license they have boasted and threatened shall be prohibitory in its nature and so high as to prevent the said plaintiff in error from carrying on the business of manufacturing and distributing gas within the City of Los Angeles.

Plaintiff in error, Caroline W. Dobbins, further alleged that each and every of the acts aforesaid so performed by the City of Los Angeles, its officers, agents and employees, were done and performed, not for the purpose of protecting any public interest or preserving any public right, but that said acts and each of them were suggested and formulated by the said Los Angeles Lighting Company, its officers, attorneys, agents and employees, solely for the purpose of protecting the said Los Angeles Lighting Company, in the enjoyment of that monopoly which has continued for upwards of ten years, as hereinbefore set forth, and for the purpose of depriving the said plaintiff in error of vested rights in property and of the privilege of pursuing her lawful undertaking and enterprise as the same is hereinbefore specifically set forth.

It is further alleged that the territory surrounding the premises of the said plaintiff in error, Caroline W. Dobbins,

hereinbefore described, in which the said gas works of the said plaintiff in error are being erected, and which was by Ordinance No. 6663, New Series, hereinbefore set forth, a portion of the territory within which the City of Los Angeles permitted the maintenance of gas works, is and was a district devoted to manufacturing and commercial enterprises almost exclusively; that in said district prior to the purchase of the property herein described by the said plaintiff in error and upon which the said gas works are being erected for said plaintiff in error as aforesaid, there was in operation a soap factory; that at all times since the 1st day of August, 1901, there has been and is now maintained within the district bounded by Rodondo and Alhambra streets, the Los Angeles river and San Fernando street, in said City of Los Angeles, one wool-pulling factory, which is directly across North Main street from the said premises of the said plaintiff in error, three wineries, numerous oil wells in operation, an extensive iron foundry in active operation, a brass foundry, and an extensive oil refinery; and that there is a great deal of vacant and unoccupied land which is and will continue to be comparatively worthless except for the purposes of the erection theron of manufacturing establishments; that immediately adjacent to the easterly line of said district last herein described are the tracks of the Southern California Railway, on which are operated the freight and passengers trains of the Santa Fe Railroad; that east of that and adjacent thereto is the Los Angeles river, and that east thereof is the right-of-way and tracks of the San Pedro, Los Angeles and Salt Lake Railroad; that immediately east of those tracks an extensive tannery is located and in operation; that immediately north of said district and north of San Fernando street, and adjacent to the tracks of the Santa Fe railroad are the oil tanks and refinery of the Standard Oil Company in extensive operation; that prior to the granting

of the permit by the Board of Fire Commissioners of the City of Los Angeles to the said plaintiff in error on the 22nd day of November, 1901, the said Board of Fire Commissioners and the members of said commission individually and jointly visited and examined the said premises and the said district surrounding the same, and having heard the protests of all persons who appeared before them, decided and determined by the granting of said permit that said premises were in all respects a suitable place upon which to erect the said gas works and to conduct the business of manufacturing gas.

It is alleged that said gas works are being constructed and are to be completed upon concrete foundations, with a superstructure of brick, steel and iron, of the best material procurable, and are not combustible, and that the same are so firmly and substantially constructed that there can be no danger from explosions, bursting or leakage; that all the machinery now in place therein or to be placed therein is of the most approved pattern, and constructed in accordance with the latest devices and improvements known in the manufacture of gas; that said works can and will be operated and maintained by the said plaintiff in error, Caroline W. Dobbins, by the use of the said devices and improvements and the said machinery therein contained, so that there will be no leakage or escape of odors, and that the same will not create a nuisance and will not interfere in any way with the health, comfort, safety or welfare of the inhabitants of the said district and territory in which the said gas works are located upon the premises of the said plaintiff in error, as hereinbefore described, or of any other of the inhabitants of the said City of Los Angeles.

It is manifest, as is alleged in said complaint, that if the said City of Los Angeles, its officers and employees, shall be allowed to arrest and to continue to arrest the

employees and servants of the said plaintiff in error, Caroline W. Dobbins, and her contractors so engaged in the completing and erection of said gas works, or in the operation and maintenance thereof when completed, and the said defendant in error, the City of Los Angeles, is allowed to carry its said threats into execution, the said plaintiff in error will be deprived of the rights of property she has already acquired and she will suffer great and irreparable loss; that already, by the acts of the said defendant in error in hindering and delaying the said plaintiff in error in manner as hereinbefore described, in the erection of said gas works and carrying out the enterprise contemplated by her of manufacturing, distributing and selling gas, the said plaintiff in error has suffered, it is alleged, damages of upwards of the sum of twenty-five thousand dollars ($25,000) in the loss of profits which would otherwise have accrued to her therefrom, that if by said acts and threatened acts of the said defendant in error the said plaintiff in error and her contractors are compelled to desist and cease the completion of said gas works, the said works partially completed as hereinbefore set forth and in their uncompleted conditon, and the said materials consisting of steel plates, iron, etc., lying unprotected and uncovered upon the premises aforesaid, are and will be exposed to the action of the elements and will be thereby greatly damaged and impaired in value and in imminent danger of complete destruction; that in the erection of said gas works, in the laying of pipe for the distribution of gas therefrom, and in the purchase of other materials to enable the said plaintiff in error to complete and carry out the said enterprise undertaken by her as aforesaid the said plaintiff in error has already paid, laid out, and expended upwards of the sum of fifty thousand dollars, over and above the cost of the premises hereinbefore described, and if the defendant in error is allowed

to carry out its said threats the said amount so paid, laid out and expended by the said plaintiff in error will become and be almost a total loss to said plaintiff in error; that in the erection and construction of said gas works skilled mechanics are necessary, and the same have been brought from divers and sundry places, from great distance from the City of Los Angeles, to wit, from Trenton, in the State of New Jersey, Philadelphia in the State of Pennsylvania, Toledo in the State of Ohio, San Francisco in the State of California, and other places, and if said City of Los Angeles is allowed to execute its said threats and arrest the said men, it is alleged said men threatened to and would leave the employ of the said plaintiff in error and her said contractors, and if said work shall be retarded and interrupted by reason of said threats and execution thereof by said City of Los Angeles, as it will be if said threats are executed, the said skilled laborers and mechanics so employed by the said plaintiff in error and her said contractors would become scattered and it would be impossible to again obtain the services of said men or the services of like men in such employment; that if said defendant in error, the City of Los Angeles, is allowed to carry out the said threats, the said employes of the said plaintiff in error and her said contractors would be subjected daily to arrests for alleged violation of the alleged ordinances, and even though the said employes should successfully defend such prosecutions, said city, defendant in error, threatened and said plaintiff in error verily believed it would continue to harrass said plaintiff in error and said employes, by repeated arrests for alleged violations of the said purported ordinances which plaintiff in error alleged to be invalid, and further, alleged that pending the final determination of the validity of said alleged ordinances by the successful completeness of the defenses interposed against said prosecutions,

the said plaintiff in error would be subjected to great expense, inconvenience and embarassment and all without any possible redress or adequate remedy at law, to the manifest injury and irreparable loss of the said plaintiff in error.

The prayer of the complaint is that the contract, entered into between the said plaintiff in error and the said defendant in error, the City of Los Angeles by virtue of the permit granted to her on the 22nd day of November, 1901, be declared and determined to be a valid and existing contract between the said City of Los Angeles and the said plaintiff in error and that all the alleged ordinances attempted to be passed by the City Council of Los Angeles in contravention thereof or in violation of the terms thereof be declared null and void as against the rights of the said plaintiff in error and that the City of Los Angeles be enjoined from enforcing the alleged ordinances numbers 6779 and 7029 against the said plaintiff in error, Caroline W. Dobbins or any of her agents, contractors, servants or employes, and from prosecuting or proceeding with any prosecutions commenced or to be commenced against the plaintiff in error or any of her agents, contractors, servants or employes, or the employes of any of them heretofore engaged or now engaged or that may hereafter be engaged in the erection of said works on the premises described in said complaint; and that the said defendant in error, the City of Los Angeles, may be enjoined and restrained from in any manner hindering, delaying or interfering with or prohibiting or preventing the said plaintiff in error from carrying out her said enterprise in erecting the said gas works upon her premises in said complaint described; and that they further be enjoined from in any way interfering with the operation or maintenance or management of the said gas works of the said plaintiff in error and for general relief.

To this complaint, on the 14th day of March, 1902, the

defendant in error, the City of Los Angeles, filed a demurrer and for ground of demurrer alleged that said complaint did not state facts sufficient to constitute a cause of action, and that the superior court of Los Angeles County had no jurisdiction of the person of the defendant or of the subject of the action.

On the hearing of this demurrer in the Superior Court of Los Angeles County, the demurrer was sustained and a judgment was entered in favor of the defendant in error on the demurrer, and for costs. From this order and judgment entered therein, the plaintiff in error, Caroline W. Dobbins, appealed to the Supreme Court of the State of California, and therein, on the 29th day of May, 1903, the Supreme Court of California filed an opinion and entered an order affirming said judgment as set forth in the transcript of the record (in the Dobbins case) herein, folios 59-65. A petition for a rehearing was filed in said cause, and afterwards, on the 27th day of June, 1903, this petition for a rehearing was denied, the Supreme Court of the State of California being divided thereon, three judges thereof agreeing upon an order to deny said rehearing, and three judges thereof dissenting. Tr. of record, folio 67.

For the reasons given in the opinion filed in the case of Caroline W. Dobbins vs. the City of Los Angeles, the Supreme Court of California discharged the writ of habeas corpus in the case of Martin Daly and remanded the prisoner to the custody of the Chief of Police of the City of Los Angeles. A petition was filed in this Daly case for a rehearing and a rehearing denied with a like result as in the Dobbins case. Transcript of record in the Daly case, folios 48 to 57, inclusive.

The petition for the writ of habeas corpus by the plaintiff in error, Martin Daly, was filed on the 30th day of June, 1902, at which time he was imprisoned, restrained

and confined of his liberty by Charles Elton, Chief of Police of the City of Los Angeles, defendant in error, by virtue of the warrant of arrest issued out of the Police Court of the City of Los Angeles on the 6th day of March, 1902, charging that the said petitioner, Martin Daly, and others therein named, had on the 6th day of March, 1902, in the City of Los Angeles, committed a misdemeanor in wilfully and unlawfully erecting and causing to be erected, maintained and causing to be maintained, certain works, establishment and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of the City of Los Angeles, outside of the limits of the district described in the ordinance in said petition for the writ of habeas corpus and hereinbefore set forth as the ordinance adopted by the City of Los Angeles on the 26th day of August, 1901, and the amendment thereto adopted on the 3rd day of March, 1902.

Martin Daly, the plaintiff in error, was the foreman in charge of said work and was acting as foreman for Davis & Farnum Manufacturing Company, in charge of the erection of the gas holder, and water tank of said gas works. The petition set forth the same facts that are set forth in the bill of complaint of Caroline W. Dobbins, as hereinbefore stated, and in such petition for a writ of habeas corpus, the said petitioner sought to have declared and determined that said complaint upon which petitoner was charged, did not state a public offense in that said alleged ordinances of the City of Los Angeles were void and invalid ordinances as against the valid rights acquired by said Caroline W. Dobbins and the said petitioner as her employee in the erection of said works.

It was contended and averred on behalf of plaintiff, in the Dobbins case, and in the petition for a habeas corpus, in the Daly case, that the ordinance attempted to be adopted

by the City of Los Angeles on the 26th day of August, 1901, entitled "An ordinance prohibiting the erection and maintenance of gas works, gas tanks and reservoirs within certain portions of the City of Los Angeles," and the amendment thereto of March 3rd, 1902, are void and invalid ordinances and were in violation of the provisions of the Constitution of the State of California and the provisions of the Fourteenth amendment of the Constitution of the United States, in that it was an attempt on the part of the City of Los Angeles to make and enforce a law which abridged the privileges and immunities of the citizens of the United States in that it attempted to prohibit the erection or maintenance of any works, or establishment or manufactory for the manufacture of gas, and the storage of gas within the corporate limits of the City of Los Angeles, except within the limits described in said ordinances for that said business of erecting and maintaining gas works was not a nuisance, but was a lawful occupation and protected by the provisions of Section 19, Article 11, of the Constitution of the State of California.

It was contended and averred in both the complaint of the said Caroline W. Dobbins, plaintiff in error, and in the petition for the writ of habeas corpus of the said Daly, that the ordinances attempted to be adopted by the City Council of the City of Los Angeles on the 25th day of November, 1901, and on the 3rd day of March, 1902, were void and invalid in that they were uncertain and unreasonable and were an attempt to regulate in an unlawful manner and without authority, the business of erecting gas works within the City of Los Angeles and were in violation of the rights secured and granted to the plaintiff by the City of Los Angeles on the 22nd day of November, 1901, and were in violation of the provisions of the Constitution of the State of California and of the Constitution of the United States,

prohibiting the passing of any laws impairing the obligations of contracts.

It was contended and averred in both the complaint of the said Caroline W. Dobbins, plaintiff in error, and in the petition for writ of habeas corpus of the said Daly, that the ordinances in question were unreasonable and oppressive, and therefore void, and infringed the rights guaranteed by the Constitution of the United States, as intending to deprive the said plaintiffs in error of their property without due process of law, and that they were not adopted by the City Council of the City of Los Angeles in the exercise of a reasonable discretion, but were a mere exercise of an unjust discrimination and to the oppression of the said plaintiffs in error.

Said ordinances are in violation of the Fourteenth Amendment of the Constitution of the United States as denying to all persons within the jurisdiction of the City of Los Angeles the equal protection of the law, and as being passed in an attempt on the part of the authorities of the City of Los Angeles to foster a monopoly, and to protect the Los Angeles Lighting Company in the enjoyment of a monopoly of the business of manufacturing and distributing gas in the City of Los Angeles and for the purpose of discriminating against the said plaintiff and to prevent her from establishing and maintaining a gas works within the limits of the City of Los Angeles.

## SPECIFICATIONS OF ERROR.

### I.

The Supreme Court of the State of California erred in deciding that the ordinance adopted by the City Council of the City of Los Angeles on the 26th day of August, 1901, number 6663, new series, entitled "An ordinance pro-

hibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles" was a valid ordinance, and that it was not in violation of the provisions of the Constitution of the State of California, and the provisions of the Fourteenth Amendment of the Constitution of the United States, in that it was an attempt upon the part of the City of Los Angeles to make and enforce a law which abridged the privileges and immunities of the citizens of the United States.

II.

The Supreme Court of the State of California erred in deciding that the ordinance adopted by the City Council of the City of Los Angeles on the 3rd day of March, 1902, Number 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs, within certain portions of the City of Los Angeles, approved August 26, 1901,' by amending section one of said ordinance" was valid as to the rights of the said plaintiff in error, Caroline W. Dobbins, acquired before the passage of said ordinance, and as against the rights of the said plaintiffs in error, Martin Daly, as an employee of Caroline W. Dobbins, acquired before the passage of said ordinance.

III.

The Supreme Court of the State of California erred in deciding that the ordinance adopted by the city council of the City of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or

reservoirs within certain portions of the City of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was a valid police regulation, lawfully adopted by the city council of the city of Los Angeles in the lawful exercise of the police power granted to the city of Los Angeles by statute of the State of California, by its charter, and by the constitution of the said State.

IV.

That the Supreme Court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the City of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was not an invalid ordinance as an unwarranted interference with the enjoyment of the property rights of the said plaintiff in error, Caroline W. Dobbins, and of the said plaintiff in error, Martin Daly, as the employee of said Caroline W. Dobbins, acquired prior to the adoption of said ordinance, and as in impairment of the obligation of contracts made before the passage of said ordinance.

V.

That the Supreme Court of the State of California erred in deciding that the ordinance adopted by the city council of the City of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks

or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was not an invalid ordinance as abridging the privileges and immunities of the said plaintiff in error, Caroline W. Dobbins, or the said plaintiff in error, Martin Daly, her employee, as depriving the said Martin Daly and his employer, the said Caroline W. Dobbins, of property rights acquired prior to the adoption of said ordinance, without due process of law.

VI.

In the case of Caroline W. Dobbins, the Supreme Court of the State of California erred in not determining that the said plaintiff in error, Caroline W. Dobbins, was entitled to relief in a court of equity enjoining the defendant, the City of Los Angeles, from enforcing, by a criminal prosecution, the said ordinance as invalid, and as infringing the said property rights of the said Caroline W. Dobbins.

VII.

In the case of Caroline W. Dobbins, the Supreme Court of the State of California erred in giving judgment for said defendant in said action and against the said plaintiff in error.

VIII.

In the case of Caroline W. Dobbins, the Supreme Court of the State of California erred in affirming the judgment of the Superior Court of the State of California therein.

IX.

In the case of Caroline W. Dobbins the Supreme Court of the State of California erred in not reversing the judgment

of the Superior Court of the State of California in said case and directing said Superior Court to enter a decree therein overruling the demurrer to the complaint therein and ordering that the said defendant be enjoined and restrained from enforcing the said ordinance against the said plaintiff Caroline W. Dobbins.

X.

In the case of Martin Daly, the Supreme Court of the State of California erred in not holding that the matters charged in the complaint against the said Martin Daly did not constitute a public offense by common law or under any ordinance of the city of Los Angeles, or any law of the State of California, or under any statute of the United States.

XI.

In the case of Martin Daly the said Supreme Court of the State of California erred in not holding that the said police court of the City of Los Angeles had no jurisdiction to issue a warrant for the arrest of the said Martin Daly.

XII.

In the case of Martin Daly, the Supreme Court of the State of Califorina erred in not holding that the said defendant in error, Charles Elton, Chief of Police of the City of Los Angeles, had no authority to arrest or detain the said plaintiff in error, Martin Daly.

XIII.

The Supreme Court of the State of California erred in not discharging the said Martin Daly, plaintiff in error, upon the return of the writ of habeas corpus herein.

## BRIEF.

### I.

In passing upon a municipal ordinance, it is necessary to its validity that its provisions should be determined to be reasonable.

*Town of Oxanna v. Allen*, 90 Ala. 468.
*Tugman v. Chicago*, 78 Ill. 405.
*Chicago v. Rumpf*, 45 Ill. 90.
*Toledo Railroad v. Jacksonville*, 67 Ill. 37.
*Lake View v. Tate*, 130 Ill. 247.

### II.

The determination by the legislative body of what is a proper exercise of the police power is not final nor conclusive, but is subject to the supervision of the courts, and what is a reasonable ordinance is a judicial, and not a legislative, question.

*Covington Turnpike Co. v. Sanford*, 164 U. S. 578, 592.
*Lawton v. Steel*, 152 U. S. 153.
*Holden v. Hardy*, 169 U. S. 366.
*In re Smith*, — Cal. —; 77 Pac. Rep. 180.
*Ex parte Whitwell*, 98 Cal. 73.
*Ex parte Sing Lee*, 96 Col. 354.
*Tiedman on State and Federal Control*, 1, p. 238.
*Jew Ho v. Williamson*, 103 Fed. 10, 17-20.

*Weill v. Ricord*, 24 N. J. Eq. 169.
*Yates v. Milwaukee*, 10 Wall. 497.
*People v. Budd*, 117 N. Y. 1.

CONTRA:

*Dobbins v. City of Los Angeles*, Tr. of record, fols. 59-65.

DISTINGUISHED.

*Munn v. Illinois*, 94 U. S. 113; and also
*Maxwell v. Fulton*, 119 Ind. 23.
*Whittington v. Pope*, 1 Har. & J. 236.
*Cooley's Const. Lim.* 6 Ed. page 247, *et seq.*

In these last three citations it is shown that the legislature is distinguished from a municipal council in enacting its police provisions and is not subject to review by the courts merely because their laws may be unreasonable.

III.

In determining the validity of an ordinance the objects and purposes sought to be accomplished are always scrutinized by the courts, and in so doing they are not limited to those matters which appear upon the face of the ordinance or of which they may take judicial notice, but may consider all the circumstances in the light of existing conditions.

*Town of Oxana v. Allen, supra.*
*Tugman v. Chicago*, 78 Ill. 405, 409.
*Chicago v. Rumpff*, 45 Ill. 90.
*Toledo, etc. R. R. v. Jacksonville*, 67 Ill. 37.
*Lakeview v. Tate, supra.*
*Ex parte Patterson* (Tex.) 58 S. W. Rep. 1011.
*People v. Armstrong*, 73 Mich. 288.
*Wreford v. People*, 14, Mich. 41, 46.

*Cleveland Ry. Co. v. City of Connersville*, 147 Ind. 277.

*State v. Boardman*, 93 Me. 73.

*Corregan v. Gage*, 68 Mo. 571.

*Pieri v. The Mayor*, 42 Miss. 493.

*Town of Kosciusko v. Slomberg*, 68 Miss. 469.

*Crowley v. West*, 52 La. An. 526.

IV.

The motives which actuate a municipal council in the adoption of ordinances are material as showing the objects and purposes for which the ordinances are adopted.

*Yick Wo v. Hopkins*, 118 U. S. 356.

*In re Ho Ah Kow*, Fed. Case No. 6546.

*C. B. & Q. Railroad v. Chicago*, 116 U. S. 234.

*Dill. on Mun. Corp.*, 4th Ed. sec. 311.

*State v. Cincinnati Gas Light Coke Co.*, 8 Ohio St. 262.

V.

The ordinance of the City of Los Angeles adopted on the 26th day of August, 1901, is invalid and not binding upon the plaintiffs in error as against their right to conduct a lawful business of erecting gas works and manufacturing gas for the following reasons:

1. It is in violation of the rights, privileges and immunities of a citizen of carrying on a lawful occupation within the City of Los Angeles.

(a) The business of erecting or maintaining a gas works is a lawful occupation.

*Constitution of the State of California*, Article XI, Sec. 19.

*Ex Parte Johnson*, 137 Cal. 115.
*People v. Stevens*, 62 Cal. 209.

(b) A municipality has not the power or right to impose additional burdens or terms or conditions to the exercise of rights created by the sovereign authority of the State in its Constitution. Restrictions in the exercise of these rights are not regulations and at least impair if they do not deny the exercise of the right.

*Ex parte Johnson, supra.*
*Township of Summit v. N. Y. & N. J. Tel. Co.*, 57 N. J., Equity, 123.
*City of Atlanta v. Gate City Gaslight Co.*, 71 Ga. 106.
*Michigan Telephone Company v. City of Benton Harbor*, 121 Mich. 512.
*Wisconsin Telephone Company v. City of Oshkosh*, 62 Wis. 32.
*Appeal of Pittsburg*, 115 Pa. St. 4.
*Borrough of Millvale v. Evergreen Railway Co.*, 131 Pa. St. 1.
*Harrisburg City Pass. R. R. Co. v. City of Harrisburg*, 149 Pa. St. 465.
*State v. Flad*, 23 Mo. App. 185.
*Hodges v. Telegraph Co.*, 72 Miss. 910.

2. This ordinance is void in that it is unreasonable because it does not describe the district to which gas works shall be confined by any geographical or natural boundary or by any reasonable designation.

3. This ordinance is invalid because it is an attempt on the part of the city council of the City of Los Angeles to define and make that a nuisance which is not a nuisance *per se*.

(a) Gas works are neither in their erection nor maintenance a nuisance *per se* and it is not within the power of the city council of the city of Los Angeles to pass an ordinance making that a nuisance which is not a nuisance *per se*, nor could such a declaration make it a nuisance unless it in fact had that character.

*Yates v. Milwaukee*, 10 Wall. 497.
*C. R. I & P. R. R. v. Joliet*, 79 Ill. 39.
*Everett v. Council Bluffs*, 46 Iowa 66.
*Ex parte Sing Lee*, 96 Cal. 354.
*County of Los Angeles v. The Hollywood Cemetery Association*, 124 Cal. 344.
*Grossman v. Oakland*, 30 Oregon 478.
*Stockton Laundry Case*, 31 Fed. 680.
*In re Hong Wah*, 82 Fed. Rep. 623, 624, 626.
*Ex parte Whitall*, 98 Cal. 73.
*Wood on Nuisances*, sec. 744.

(b) The power granted in the City Charter to *abate* nuisances does not give power to *prevent* except in those cases of nuisances *per se*, and those things which only become nuisances because of the method of their operation cannot be prevented and stopped under the power to abate until it has been demonstrated they are nuisances.

*Lakeview v. Letz*, 44 Ill. 81, 83.

VI.

The ordinance number 6779 of November 25th, 1901, was repealed by the ordinance number 7029 of March 3rd, 1902. The ordinances are on the same subject matter. The latter ordinance covers the whole subject matter of the earlier and will repeal the former.

23 *American and English Encyclopedia of Law*, 485.

## VII.

The ordinance of March 3rd, 1902, is invalid for the reason that it is in violation of the vested rights acquired by the plaintiff in error, Mrs. Dobbins, by virtue of her purchase of land within the limits of the district within which it was lawful to erect gas works by the terms of the ordinance of August 26th, 1901, and by virtue of the permit granted to her by the Board of Fire Commissioners of the City of Los Angeles on the 22nd of November, 1901, under the existing building and fire ordinance.

(a) The rights acquired by said plaintiff in error were vested rights.

*Calder v. Bull*, 3 Dall. 394.
*Farrington v. Tennessee*, 95 U. S. 679.
*Steamship Co. v. Jolliff*, 2 Wall. 457.
*Worth v. Cranson*, 98 U. S. 118.
*Classen v. Chespeake Guano Co.*, 81 Md. 258.
*Roberts v. Brooks*, 71 Fed. Rep. 914.
*Baltimore Trust Co. v. Baltimore*, 64 Fed. Rep. 153.
*Levis v. City of Newton*, 75 Fed. Rep. 884.
*Cleveland City Railroad Co. v. City of Cleveland*, 94 Fed. Rep. 385.
*City Railway Company v. Citizens' Street Railway Co.*, 166 U. S. 562.

(b) The ordinance of March 3rd, 1902, is void as depriving the said plaintiff in error of property without due process of law.

*City of Chicago v. Netcher*, 183 Ill. 104.
*C. B. & Q. R. R. v. Chicago*, 166 U. S. 234.
*Frorer v. People*, 141 Ill. 171.
*Ramsey v. People*, 142 Ill. 380.

*Braceville Coal Co. v. People*, 147 Ill. 66.
*Cooley Const. Lim.* 393.

VIII.

The ordinance of March 3rd, 1902, is not within the police power, nor is it a proper police regulation.

(a) The police power has reference to those things which affect the public health, the public safety, the public comfort, or the public morals.

*Noel v. People*, 187 Ill. 587.
*City of Chicago v. Netcher*, *supra*.
*State v. Donaldson*, 41 Minn. 74.
*City of Indianapolis v. Consumers' Gas Trust Company*, 140 Ind. 107.
*Barthet v. City of New Orleans*, 24 Fed. Rep. 564.
*City of Buffalo v. Chadeayne*, 134 N. Y. 163.
*New Orleans Gas Company v. Louisiana Light Company*, 115 U. S. 650.
*Walla Walla v. Walla Walla Company*, 172 U. S. 115.

DISTINGUISHED.

*Beer Company v. Massachusetts*, 97 U. S. 25.
*Fertilizing Company v. Hyde Park*, 97 U. S. 659.
*Stone v. Mississippi*, 101 U. S. 814.
*Slaughter House Cases*, 16 Wall. 36.
*Butchers' Union Co. v. Crescent City Live Stock Landing Co.*, 111 U. S. 746.
*Ex parte Lacey*, 108 Cal. 326.
*Barbier v. Connolly*, 113 U. S. 27.
*Knoxville v. Bird*, 12 Lea. 121.
*Davenport v. City of Richmond*, 81 Va. 636.

(b) The provisions of Section 11 of Article XI of the

Constitution of the State of California is not a grant of the police power. It is simply an extension to counties, cities and towns of the right to exercise powers that are inherent in the legislature as the representative of the people; but it is in no sense an enlargement of that power.

*Ex parte Campbell*, 74 Cal. 20.
*Ex parte Roach*, 104 Cal. 272.
*County of Los Angeles v. Hollywood Cemetery Assn.*, 124 Cal. 344.

## IX.

A court of equity has power to restrain by injunction a municipality from instituting criminal proceedings when such criminal prosecutions are threatened under color of an invalid ordinance for the purpose of compelling the relinquishment of a property right.

*Davis & Farnum Manufacturing Company v. Los Angeles*, 189 U. S. 207.
*Central Trust Company v. Citizens' St. R. Co.*, 80 Fed. Rep. 225; s. c. 82 Fed. 1.
*Reagan v. Trust Co.*, 154 U. S. 326.
*Southern Express Co., Mayor, etc., of Ensley*, 116 Fed. 756.
*Lottery Co. v. Fitzpatrick*, 3 Woods, 222, Fed. Cases No. 8,541.
*Springhead Spinning Company v. Riley*, L. R. 6 Eq. 588.
*Osborn v. United States Bank*, 3 Wheat. 738.
*Wood v. City of Brooklyn*, 14 Barb. 425.
*Manhattan Iron Works v. Freuch*, 12 Abbott's N. C. 446.

*Rushville v. Rushville Natural Gas Co.*, 132 Ind. 575.
*Davis v. Fasig*, 128 Ind. 271.
*Platte & D. Canal & Milling Co. v. Lee, Mayor*, (Colo.) 29 Pac. Rep. 1036.
*Smith v. Bangs*, 15 Ill. 399.
*Mayor of Baltimore v. Radecke*, 49 Md. 218.
*Cape May & L. R. Co. v. City of Cape May*, 35 N. J. Eq. 400.
*Los Angeles City Water Co. v. City of Los Angeles*, 103 Fed. Rep. 711.
*City of Atlanta v. Gate City Gaslight Co.*, 71 Ga. 196.
*City of Austin v. Austin City Cemetery Association*, 87 Tex. 330.
*Port Mobile v. Louisville & N. Railway Co.*, 84 Ala. 115.
*Smyth v. Ames*, 169 U. S. 466, 517.
*Detroit v. Detroit Citizens' Railway Co.*, 184 U. S. 368, 378.

## X.

The plaintiff in error, Caroline W. Dobbins, has no remedy against the defendant in error for damages for the wrongful arrest of her employes or for the destruction of her business and property rights.

*Steadman v. San Francisco*, 63 Cal. 193.
*Chope v. Eureka*, 78 Cal. 508.
*Doeg v. Cook*, 126 Cal. 213.

## XI.

It is not enough that the plaintiff has a remedy at law.

It must be as efficient and as prompt in its administration as the remedy in equity.

*Boyce v. Grundy*, 3 Peters 377.
*Walla Walla City v. Walla Walla Water Co.*, 172 U. S. 1, 12.
*Insurance Co. v. Bailey*, 13 Wall. 616, 621.
*Kilbourn v. Sunderland*, 130 U. S. 505, 514.
*Tyler v. Savage*, 143 U. S. 79, 95.
2 Story Eq., Sec. 928.

XII.

Where a law under which a prisoner is held has been declared unconstitutional and where the unreasonableness and oppression of the ordinance is not apparent upon the face thereof, evidence in such cases will be admitted by a court of general jurisdiction upon habeas corpus showing existing conditions and for the purpose of determining whether a public offense has been committed.

*Ex parte Smith*, — Cal. —; 77 Pac. Rep. 180.
*Ex parte Neilson*, 131 U. S. 176.
*Ex parte Lang*, 85 U. S. 163.
*Ex parte Siebold*, 100 U. S. 176.
*In re Coy*, 127 U. S. 731, 758.
*Ex parte Mayfield*, 141 U. S. 107.
*Yick Wo v. Hopkins*, 118 U. S. 356.

## ARGUMENT.

The judgments of the Supreme Court of the State of California which are called in question by these writs of error were supported by an opinion filed in the Dobbins case, and upon the authority of that opinion the judgments here sought to be reversed were rendered in both of these cases. It is therefore proper that we should present to this Court at this time this opinion. It is as follows:

This action was brought to obtain an injunction restraining the defendant, the City of Los Angeles, a municipal corporation, from enforcing certain ordinances of the city prohibiting the erection or maintenance of gas works within certain parts of said city. A demurrer to the complaint was sustained in the court below and judgment rendered for defendant. From the judgment plaintiff appeals.

On the 26th day of August, 1901, the city adopted an ordinance, No. 6663, by which it was provided that "it shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment, or manufactory, for the manufacture of gas; or any tank, reservoir, or other receptacle for the storage of gas, within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit" (and then follows a description of the district.) It was also provided that any person who should violate the above provision should be guilty of a misdemeanor, and upon conviction be punished by fine or imprisonment or both. On the 3rd day of March, 1902, the city adopted another ordinance No. 7029, amendatory of the said ordinance 6663. This second ordinance merely amends the first by changing the boundaries of the area within which, the erection and maintenance of gas works was prohibited. These two ordinances are the only ones necessary to be considered. The plaintiff was engaged in erecting

gas works within the territory in which the erection of such works was prohibited by the second ordinance and it is averred that, by procurement of the defendant, certain employees of plaintiff engaged in labor upon her said gas works have been arrested and prosecuted for a violation of said ordinance, and that defendant threatens to continue to arrest and prosecute her employees for such violation. The prayer of the complaint is that defendant be enjoined and restrained from enforcing said ordinances and from "prosecuting or proceeding with any prosecution commenced or to be commenced" under said ordinances against plaintiff or any of her agents or employees. There are other averments in the complaint which will be noticed hereafter.

The general contention of appellant that the ordinances in question are invalid and void because violative of the 14th amendment to the Federal Constitution, and of other constitutional guaranties State and Federal of the enjoyment of property, or vested rights, the equal protection of the law, etc., is not maintainable.

The ordinances were passed in the exercise of the police power which is fully granted to the city of Los Angeles by statutory law, by its charter, and by the constitution of the State. Its charter gives it power to suppress or prohibit all offensive places of business, and to regulate or prohibit explosives, combustibles, or inflammable material within the city, or any specified part thereof.

By the act of the State legislature of April 4, 1870, entitled "An act concerning gas works," (Stats. of 1869-70, p. 815) it is provided that cities "may also control the location and construction of works so that they may be erected on suitable locations to give the least discomfort or annoyance to the public." This act was expressly continued in force by subdivision 20 of section 19 of the political code. And by the State constitution itself, (art. XI, sec. 11) it is provided that "any county, city, town or township may make and enforce within its limits all such local, police, sanitary or other regulations, as are not in conflict with general laws." There is no doubt therefore, that the exercise of this police power belongs to the respondent within its territorial limits; and the only question is whether the adoption of the

ordinances in question was a legitimate exercise of it; for all property is held subject to that power. An ordinance obviously and undoubtedly foreign to any of the recognized purposes of the police power, and interfering with the ordinary enjoyment of the property would no doubt, be held by a court to be invalid. But where the ordinance is reasonably within a proper consideration of, and care for, public health, safety, or comfort, a court will not disturb the legislative act; it will not substitute its own views of what is proper in the premises for those of the legislative body. In *Munn v. Illinois*, 94 U. S. 113, the U. S. Supreme Court states the rule thus: If no state of circumstances could exist to justify a certain statute, then we may declare this one void because in excess of the legislative power of this State; but if it could, we must presume it did. Of the propriety of legislative interference, within the scope of the legislative power, the legislature is the exclusive judge." This rule is very fully discussed and declared in *Powell v. Commonwealth of Penn.*, 127 U. S. 617—the "oleomargarine" case. (See also, *Crowley v. Christianson*, 137 U. S. 87, and *Canfield v. United States*, 167 U. S. 518.) And it cannot be said judicially that volatile, inflammable, explosive and bad smelling gas, is not within the category of things which interfere with the public safety, welfare and comfort, and therefore beyond the reach of the police power. The exercise of this power is not confined to the regulation of only such interferences with the public welfare and comfort as come strictly within the common law definition of a "nuisance." (*Ex parte Lacey*, 108 Cal. 326; *Ex parte Schrader*, 33 Cal. 283.)

It is averred in the complaint that the said ordinances were adopted, not for the purpose of protecting public interests, but for the purpose of protecting and favoring a certain named company engaged in the manufacture and sale of gas in said city. But the motives which induce a legislative body to make a law cannot be considered in a judicial proceeding in which the validity of the law in question is involved. In Cooley's Constitutional Limitation, sixth edition, p. 231, it is said: "Although it has sometimes been urged at the bar that the courts ought to inquire into the

motives of the legislature where fraud and corruption were alleged, and annul their action if the allegation were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon. The reasons are the same here as those which preclude an inquiry into the motives of the governor in the exercise of the discretion vested in him exclusively. He is responsible for his acts in such a case, not to the courts, but to the people;" and numerous authorities are referred to which sustain the text. (See also, *Hing v. Crowley*, 113 U. S. 703.)

It is also averred that prior to the adoption of the second ordinance plaintiff had made certain contracts with third parties to furnish materials for and do labor on gas works which she was about to erect, and had purchased land to be used as a site for such works within the territory where the erection of such works, under the first ordinance was permitted, and had expended a considerable amount of money in building the foundation of her contemplated works, and in partly erecting the same; and that by the second ordinance the boundaries of the district were so changed as to put her said land outside of the territory where gas works were permitted. And it is further alleged that prior to the adoption of the second ordinance she had commenced to erect her works under a permit of the board of fire commissioners of said city in pursuance of the fire and building ordinances. And she contends, that even if the general principle relied on is not maintainable, these additional facts make the second ordinance invalid as an unwarranted interference with the enjoyment of property, an impairment of the obligations of the contracts, etc. But this contention cannot be maintained. The ordinance provides that "it shall be unlawful for any person to erect or maintain" gas works outside of the described district. This language clearly includes works in course of construction as well as those to be begun in the future; and under the authorities the exercise of the police power clearly covers prohibited buildings partly erected, although great hardship to the builder may follow. It is somewhat difficult to see exactly what is the character and significance of the alleged permit

from the fire commissioners. Appellant contends that it was an express contract with the city to allow her to erect and maintain her gas works. We do not think that this conclusion results from the averments of the complaint. At all events there was nothing in this permit which took away from the city the police power which it afterward exercised. The city could not thus estop itself from making and enforcing proper police regulations. In *Fertilizing Co. v. Hyde Park*, 97 U. S. 659, the legislature of the State had granted to plaintiff the privilege of manufacturing fertilizers in the village of Hyde Park and conveying the products through its streets, and plaintiff had expended $200,000 in constructing its plant; but it was held that notwithstanding these facts the village, by virtue of its police power, could prohibit the business and compel the plaintiff to abandon its works. In *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U. S. 672, the court says: "Rights and privileges arising from contracts with a State are subject to regulations for the protection of the public health, the public morals, and the public safety, in the same sense, and to the same extent, as are all contracts and all property, whether owned by natural persons or corporations. Whatever therefore in the manufacture or distribution of gas in the city of New Orleans proves to be injurious to the public health, the public comfort, or the public safety, may notwithstanding the exclusive grant to plaintiff, be prohibited by legislation, or by municipal ordinance passed under legislative authority." (See also *Barbour v. Connelly*, 113 U. S. 27; *Stone v. Miss.* 101 U. S. 814; *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 750; *Ex parte Lacey*, 108 Cal. 326.)

Our conclusion is that the ordinances here involved are valid and that therefore the judgment should be affirmed. This view makes it unneccessary to consider the question elaborately discussed by council, to-wit, whether or not a court of equity will ever enjoin a criminal prosecution.

The judgment appealed from is affirmed.

McFARLAND, *J.*

We concur:

SHAW, *J.*

ANGELLOTTI, *J.*

LORIGAN, *J.*

HENSHAW, *J.*

After this opinion was rendered, a petition for rehearing was filed in the Supreme Court of the State of California, and on the hearing of that petition for a rehearing the following order was entered.

By the COURT: Rehearing denied, June 27, 1903; Beatty, C. J., Lorigan, J., Henshaw, J., dissenting; Vandyke, J., declining to act.

In the matter of the petition of the application of Martin Daly for a writ of habeas corpus the following opinion was rendered:

By the COURT: The only ground upon which the applicant could be discharged on this proceeding, is the alleged invalidity of certain ordinances of the city of Los Angeles. But in the recently decided case of *Dobbins v. City of Los Angeles, L. A.* No. 1330, (Cal. Dec. vol. 25, p. —) the validity of those ordinances was directly involved, and it was there held that the same are valid; and on the authority of that case the prayer of the petitioner is denied.

The petitioner is remanded and the writ is discharged.

A petition for rehearing was also filed in this case similar to the petition for rehearing in the Dobbins case and with a like result, as in that case.

The opinion filed by the Supreme Court of California overlooks the fundamental principles upon which our constitutional guarantees rest. The vital and controlling principles which underlie our right to seek redress here have been overlooked. The opinion of that Honorable Court commits practically to municipal authorities the conclusive decision which has been from time immemorial regarded, and correctly so we think, within the exclusive province of the judiciary; in other words, it is held that, in violation of the constitution, a municipal council is constituted a judicial tribunal from whose decision there is practically no appeal. The Supreme Court of California in the opinion of the Dobbins case quoted with approval from *Munn v. Illinois*, 94

U. S. 113, the following language and applied it to the case at bar: "If no state of circumstances could exist to justify a certain statute, then we may declare this one void because in excess of the legislative powers of this state; but if it could, we must presume it did." If that doctrine is to be accepted as controlling the construction of *municipal ordinances* and determining their validity, it imperils every vested right in every franchise conferred by the state or by any of its agents, and places it within the power of all municipal bodies to so arbitrarily and unreasonably restrict the exercise of all valid franchises as to render them in effect null and void. We submit that the more reasonable and correct doctrine is enunciated in that portion of the opinion where Mr. Justice McFarland says: "An ordinance obviously and undoubtedly foreign to any of the recognized *purposes* of the police power, and interfering with the ordinary enjoyment of property would no doubt be held by a court to be invalid." We are here to show that the *purposes* of these ordinances were not within the recognized scope of the police power and to call also to this Court's attention the fact that the court below made no effort to pass upon the *purposes* for which these ordinances were passed. The Court below recognized this principle when it said, "But where the ordinance is reasonable with a proper consideration of and care for the public health, safety or comfort, the court will not disturb the legislative act." It will also be observed that throughout the opinion there is not a single authority referred to which supports the proposition that a court possessing the unlimited judicial powers of the Court below must be confined, in its determination of the validity of an ordinance, to the face of the ordinance itself, no matter how speciously and ingeniously drafted in order to conceal its true purpose and object and its inevitable result as shown by the admitted facts in this case.

**In determining the validity of an ordinance of this character, the particular circumstances of each particular case are to be considered by the Court, and it will never be limited in its inquiry to a consideration of those matters which appear upon the face of the ordinance only.**

The effect of the conclusion reached by the Court below in their opinion is substantially to assert the doctrine that in determining the validity of an ordinance extrinsic facts running to its reasonableness in the particular case in question are not to be considered. It has always been recognized by every court in the United States that in passing upon a municipal ordinance, as contradistinguished from an act of the State Legislature, its reasonableness was necessary to its validity. No such limitation as this is placed upon the action of a State Legislature; and its acts, although unreasonable, if constitutional, and within its power to enact, are held valid. [See *Maxwell v. Fulton*, 119 Ind. 23; *Whittington v. Polk*, 1 Har. and J. (Md.) 236; Cooley's Constitutional Limitations, 6th Ed. page 197, *et seq*] *A by-law or ordinance of a municipal corporation, however, must be reasonable* even though the municipality be vested with power to legislate upon the subject in question. In support of the position taken by the Court below with reference to the presumption of the existence of a state of facts which would justify the legislation we are referred to *Munn v. Illinois, supra;* but that case involved the construction of a statute of the Illinois legislature limiting the charges for grain elevator service in that state, and it had nothing whatever to do with the mode of exercising police powers by municipalities. In passing upon the reasonableness of an ordinance courts will always consider the objects and purposes of the legislation and consider this in connection with the particular facts involved.

We will cite to this Court a few of the authorities which

constitute the overwhelming declaration of this rule in the United States and in each one of these cases cited the ordinance was directed at a subject within the police power and which looked fair and honest enough on its face, but when considered in the light of surrounding facts it was determined that the ordinances were, to say the least, unreasonable.

The Supreme Court of Alabama recognized the justice of the above rule. In *Oxanna v. Allen*, 90 Ala. 468, it was said, "The ordinance in question was, in our judgment, void for unreasonableness. * * * True, it has reference to a subject-matter within the corporate jurisdiction and the rule is that in such cases a municipal ordinance will be presumed reasonable *prima facie, unless the contrary appears* on the face of the law itself, *or is established by proper evidence.*"

The Supreme Court of Illinois, in *Tugman v. Chicago*, 78 Ill. 405, at page 409, said, "If one of the citizens of Chicago is permitted to engage in the business of slaughtering animals in a certain locality, an ordinance which would prevent, under a penalty, others from engaging in the same business would not only be unreasonable, and for that reason void, but its direct tendency *would be to create a monopoly*, which the law will not tolerate." And in the case at bar it is conceded by the demurrer that it was the purpose and object of the muncipal council in adopting the ordinance under review to maintain and foster the then existing monopoly of the gas business. (See also, *Chicago v. Rumpff*, 45 Ill. 90.)

An ordinance providing for the safety of the public by requiring a railroad to place a flagman at certain crossings is undoubtedly within the exercise of the police power; yet the Supreme Court of Illinois considered an ordinance of that character and held that in reference to the particular crossing in question it was unreasonable, as the railroad showed that they ran no trains past that crossing at night; that but

very few were run in the daytime; and that the neighborhood surrounding the crossing in question was a sparsely settled community. See *Toledo etc. Railroad v. Jacksonville*, 67 Ill. 37.

A case which approves this doctrine and the facts in which bear a significant resmblance to those in the case at bar is that of *Lakeview v. Tate*, 130 Ill. 247. The town of Lakeview provided that for the purpose of regulating the speed of railroad trains the town should be divided into two districts. In the first district the speed of passenger trains was limited to ten miles per hour (a subject undoubtedly within the police power); but in the second district no limitations upon the speed of passenger trains was placed. In considering the question of the reasonableness of the ordinance the court took cognizance of the locality and character of the portions of the town which were districted by the ordinance, and the opinion discloses and the real reason for the passage of the ordinance was that there were two rival railroads running to the City of Chicago from Lakeview; that one of the railroads, doubtless in high favor with the municipal authorities, ran its line in the district in which no limitation was placed upon the speed of trains, and that the other road, less favored in its association with the city council, ran through the district in which the ten-mile limit applied. The court considered the physical conditions existing in the two districts, recognized the fact that if one suburban road was prevented from running its trains at the same speed as its competitor under practically the same conditions, that an unlawful discrimination was being attempted by the muncipal council under the guise of an ordinance which was within the scope of the police power, and upon its face and without examining into the question of fact involved, seemed fair enough. The ordinance was held to be unreasonable and therefore void. On account of the

sound reasoning contained in this opinion and the very close analogy on the question of discrimination in the formation of districts, we respectfully urge a careful consideration of it by this Court.

We will content ourselves with merely referring to six other cases to the same effect:

*Ex parte Patterson*, 58 S. W. (Texas Rep.) 1011.
*People v. Armstrong*, 73 Mich. 288.
*Wreford v. The People*, 14 Mich. 41, 46.
*Cleveland Ry. Co. v. City of Connersville*, 147 Ind. 277.
*Corregan v. Gage*, 68 Mo. 541.
*Pieri v. The Mayor*, 42 Miss. 493.

In view of the principles which are established by the above cases, and having in mind that portion of the opinion of the court below which reads as follows, "An ordinance obviously and undoubtedly foreign to any of the recognized purposes of the police power and interfering with the ordinary enjoyment of property, would no doubt be held by a court to be invalid," we desire to call this Court's attention to the allegations of the complaint in the Dobbins case which are admitted by the demurrer in reference to those matters wherein the city might legitimately adopt police regulations affecting us, and which, as we have always conceded in this case, we would be glad to have it adopt if they applied, with reference to their restrictive provisions concerning the methods of manufacturing gas, to all the gas companies in this community.

The complaint alleges that the gas works in question are being constructed and are to be completed upon concrete foundations with a superstructure of brick, steel and iron, of the best material procurable, and are not combustible. That the same are so firmly and substantially constructed

that there can be no danger from explosions, bursting or leakage; that all the machinery now in place therein or to be placed therein is of the most improved pattern and constructed in accordance with the latest devices and improvements known in the manufacture of gas; that said works can and will be operated and maintained by the said plaintiff in error, Caroline W. Dobbins, by the use of the said devices and improvements and the said machinery therein contained so that there will be no leakage or escape of odors, and that the same will not create a nuisance and will not interfere in any way with the health, comfort, safety or welfare of the inhabitants of the said district and territory in which said gas works are located on the premises of plaintiff in error, Caroline W. Dobbins, or of any other of the inhabitants of the City of Los Angeles. (Transcript Dobbins case, folios 45, 46.)

That the territory surrounding the premises upon which these works are being built is and for some years has been a district devoted to manufacturing and commercial enterprises almost exclusively; that upon the premises purchased by plaintiff in error, Caroline W. Dobbins, on which to erect her gas works, there was situated a soap factory in full operation up to the time of such purchase; and that at all times since the first of August, 1901, there have been and now are in the district surrounding said plaintiff in error property and upon which the said gas works are being built, one wool-pulling factory, which is directly across the street from the gas works, three wineries, numerous oil wells in operation, an extensive iron foundry in active operation, a brass foundry and an extensive oil refinery, together with many other commercial and industrial enterprises which are of great value to any community and which are not usually conducted in exclusive residence portions of the city. (Transcript Dobbins, folios 44, 45.)

The fact is also alleged in this complaint and conceded by the demurrer that the act of passing the ordinance in question by the City of Los Angeles was not for the purpose of protecting any public interest or preserving any public right, but that it was suggested and formulated by the Los Angeles Lighting Company, its officers, agents, attorneys and employees, solely for the purpose of protecting the said Los Angeles Lighting Company in the enjoyment of that monopoly which has continued for upwards of ten years, as in said complaint alleged, and for the purpose of depriving said plaintiff in error of the privilege of pursuing her lawful undertaking and enterprise. (Transcript Dobbins folio, 43.)

It will also be observed by this court that from the admitted facts contained in the complaint, during the time of passage of all these ordinances the district had remained the same in the general character of its occupancy, and that all these manufacturing and industrial enterprises were then and are now being conducted within the district described by the first ordinance No. 6663, which created the district in which gas works might be erected, and into which we moved and spent thousands of dollars in complying with the municipal direction.

There can be no security for property rights in the State of California or under the constitution of the United States, which can be in any way affected by municipal ordinances if, for such an arbitrary, unreasonable and questionable discrimination as the facts above set forth disclose, we have no redress before this Court. We show that the works are not combustible; we show that the district is a locality devoted to manufacturing enterprises; that other business undertakings are being conducted there which, "if they do not amount to nuisances *per se*" are quite as obnoxious from the standpoint of public health, safety and comfort as a properly conducted gas works could be; we show that the district

created by the first ordinance, and in which we were lawfully building, is of the same general character as to occupancy as the new district, and geographically a portion of the new district which the council in the next ordinance adopted as the exclusive limits within which such enterprises could be carried on. It is a legitimate conclusion from the facts which we have stated that the council did not adopt this ordinance as a health measure nor to protect the safety of the community against the making of gas, but solely for the purpose of discriminating between this plaintiff in error and the Los Angeles Lighting Company, of driving this plaintiff in error out of her lawful business by denying her the right to conduct it, and of fostering and maintaining the monopoly so long enjoyed by the company at whose instigation these ordinances were adopted. If these facts do not completely establish the unreasonableness of these ordinances, we are unable to perceive what state of facts would justify a court in holding that the police power delegated to the municipality was unreasonably exercised.

In a paper delivered before the American Bar Association at its annual meeting in 1903 by Judge Le Baron B. Colt, U. S. Circuit Judge for the First Circuit, the doctrine of reasonableness is, with all the force of a judicial utterance, declared by him as follows: "It is held that the exercise by the legislature of its great powers in an unreasonable way is not due process of law, or equal protection of the laws, within the meaning of the Fourteenth Amendment. In reaching this position, it became necessary for the court to lay down a principle which is far-reaching and fraught with momentous consequences, namely, that the question of what is reasonable is a judicial, and not a legislative, question. As this question was first left by the court in *Munn v. State of Illinois, supra*, it might have been supposed that it was for the legislature to determine what is reasonable. In the subsequent case, however, of *Chicago*

*Railway Company v. Minnesota*, 134 U. S. 418, it was decided that the legislature could not authorize the imposition of unreasonably low rates, since such action would deprive railroads of their property without due process of law. And in later cases it has been authoritatively adjudicated that the question of what is reasonable is for the court, and not for the legislature. In *Covington Turnpike Company v. Sanford, supra*, the court declared:

" 'There is a remedy in the courts for relief against legislation establishing a tariff of rates which is so unreasonable as to practically destroy the value of the property of companies engaged in the carrying business, and that especially may the courts of the United States treat such a question as a judicial one, and hold such act of legislation to be in conflict with the constitution of the United States, as depriving the companies of their property without due process of law, and as depriving them of equal protection of the laws.'

"The paramount inquiry by the Supreme Court in all cases involving the exercise of the police power is whether the action of the legislature is reasonable under the circumstances, or an arbitrary and unreasonable interference with individual liberty. An admirable summary of the court's views on this important subject is found in *Lawton v. Steele*, (152 U. S. 133.)

" 'To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.'

"In the close of the opinion in *Holden v. Hardy*, (169 U. S. 366), after an elaborate review of the cases and underlying principles, the Court said:

"'The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class.'"

The same doctrine has been extended by this Court to the executive branch of the government (*Yick Wo v. Hopkins*, 118 U. S. 356) where the petition for the writ set up matters which did not appear upon the "face of the ordinance," and which led the Court to the conclusion that the ordinance was invalid because of its unequal and partial enforcement.

The Supreme Court of the State of California since the rendering of the opinion in the Dobbins case above referred to, seems to have come to another conclusion than that annunciated in the opinion in the Dobbins case in reference to the power of the courts to judge as to whether an ordinance or an act of the legislature is a reasonable restraint upon the constitutional right of a citizen to pursue any trade, business or vocation which in itself is recognized and useful in a community, and they have declared themselves, in language not to be misunderstood, that *it is always a judicial question if any particular regulation of such a right is a valid exercise of the police power.*

In an opinion rendered by that Court on the 30th day of May, 1904, in the case of *Ex parte Smith* on habeas corpus, the following opinion was rendered:

HENSHAW, J. The petitioner is in custody for the alleged violation of a criminal ordinance of the county of Los Angeles, making it a misdemeanor to erect or maintain gas works, gas holders, gas tanks, etc., within a boundary fixed in the ordinance. Before the passage of the ordinance, petitioner and others had erected the gas works within the district and were supplying gas to consumers, inhabitants of the cities of Pasadena and Los Angeles. After his works were so in operation the ordinance in question was adopted.

Its effect, if valid, is to suppress his business. In his petition he set up, with other matters, that the district within which it is declared to be illegal to erect or maintain gas works is a sparsely settled rural community lying between the cities of Los Angeles and South Pasadena on the south and the city of Pasadena and the city of Los Angeles upon the north, through the center of which runs a wash which is known as the Arroyo Seco. This wash is a sandy, rocky waste, between 200 and 300 yards in width, and constitutes 95 per cent. of the district described in the ordinance. In the immediate vicinity of the gas works there are no dwelling houses, none nearer than a distance of about 300 yards, and the whole district contains only 15 places of habitation. It is further alleged that the works are safely and securely constructed, so as to be free from danger from leakage or explosion of gas; that the gas made is such as is ordinarily distributed to consumers in the various cities of the state; that it is impossible, owing to the secure method of construction, for any odors to escape; and that the works as constructed and operated do not and cannot injuriously affect the health, safety, welfare, or comfort of the citizens of the county of Los Angeles, or of any of them. Other matters are set forth, touching the motive of the board of supervisors in passing the ordinance; it being herein asserted that it was passed to perpetuate the monopoly of another gas company. The ordinance itself is fully set forth in the petition.

It being within the powers of the board of supervisors in proper cases to regulate, or even to prohibt, the manufacture of gas within prescribed limits, this ordinance upon its face would appear to be innocuous and valid. It became necessary, therefore, for the pleader in his petition to set forth the matters *de hors* the ordinance, by virtue of which he contends that the ordinance is unreasonable, oppressive and void. Upon the issuance of the writ the constable made the return contemplated by law, showing that he held the petitioner under a criminal complaint and warrant of arrest upon the charge of violating the ordinance. He further made return that he had no information or knowledge of the other facts set up in the petition for the purpose of showing

its unreasonableness, and the case was submitted on the theory that those alleged facts are true. Under our practice, upon the filing of the return, the petition is treated as a traverse to it. Then, if any of the matters in the petition, so treated as a traverse to the return, are denied, it is incumbent upon the person to whom the writ is addressed to join issue upon them. In the absence of such issue joined, the facts set forth in the petition will be taken as true. So, in this case, the facts averred will be considered as admitted.

It will not be disputed that the business, here sought to be prohibited is not only legitimate and useful, but even necessary, to our present civilization. Moreover, under the very terms of our Constitution, it is a recognized lawful occupation. Const. art. 11, sec. 19. The county of Los Angeles, therefore, has no power to prohibit the manufacture of gas, though it may, in the legitimate exercise of its powers, regulate its manufacture and the places thereof. Upon the other hand, the right of cities and counties within this state to pass ordinances, in the exercise of the police power, comes direct from constitutional grant. Const. art. 11, sec. 11. It is by virtue of this constitutional grant that the respondent argues that courts in construing the validity of the ordinance will take into consideration only the face of the ordinance and such facts as are within the judicial cognizance of the court, and herein reliance is had on the language of the Supreme Court in *Munn v. Illinois*, 94 U. S. 113, which declares: "If no state of circumstances could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the state; but, if it could, we must presume it did. Of the propriety of legislative interference within the scope of legislative power, the legislature is the exclusive judge." But, running current with this principle, and to be read with it, is one of equal importance, namely, that when the police power is exerted to regulate a useful business or occupation, the legislature is not the exclusive judge as to what is a reasonable and just restraint upon the constitutional right of the citizen to pursue any trade, business, or vocation, which in itself is recognized as innocent and useful to the community. It is always a judicial question if any particular regulation of

such right is a valid exercise of police power, though the power of the courts to declare such regulation invalid will be exercised with the utmost caution, and only when it is clear that the ordinance or law declared void passes the limits of the police power, and infringes upon rights guaranteed by the Constitution. *Ex parte Whitwell*, 98 Cal. 73, 32 Pac. 870; 19 L. R. A. 727, 35 Am. St. Rep. 152. Indeed, the Supreme Court of the United States, in cases later than that of *Munn v. Illinois*, has set at rest any doubt that might exist as to the meaning of the language employed in the earlier case. In *Lawton v. Steele*, 152 U. S. 133, 137, 14 Sup. Ct. 499, 501, 38 L. Ed. 385, it is said: "To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts." And again in *Holden v. Hardy*, 169 U. S. 366, 398, 18 Sup. Ct. 383, 390, 42 L. Ed. 780, the court says: "The question in each case is whether the Legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class."

As has been said, there must always be left a large discretion in the legislative body, with the exercise of which the courts will not, and have no desire to, interfere. Nor will they in any event interfere, except where the case be plain that needless oppression is worked and constitutional rights invaded. But courts are not limited in their inquiry to those cases alone, where such a situation is shown upon the reading of the statute. They will consider the circumstances in the light of existing conditions. In city ordinances, as distinguished from county ordinances, the inter-

est and requirements for protection of a thickly settled and growing community will often be widely different from those of sparsely settled and thinly inhabited rural districts. An ordinance limiting, regulating, or even prohibiting, in a certain district within the corporate limits of a city, may be perfectly reasonable, where like limitations, restrictions and prohibitions as to some district within the county, arbitrarily carved out, would be oppressive and unreasonable in the extreme. Owing to the peculiar conditions existing in cities, courts are not keen to question the wisdom of the legislative exercise of their police powers; but, as the same conditions do not exist in the country, county ordinances, passed in the exercise of the same power, may well be scanned with more critical eye. And, as it must happen in the case of many of these ordinances that the unreasonableness and oppression is not apparent upon the face thereof, evidence in such cases will be admitted to show the existing conditions. But this evidence will not go to motive. If the conditions justify the enactment of the ordinance, the motives prompting its enactment are of no consequence. If the conditions do not justify the enactment, the inquiry as to motive becomes useless. This is but in accordance with the well-settled rule, and for that reason the allegations touching the motive of the board of supervisors in passing the ordinance here under consideration have been and are entirely disregarded. But in support of the proposition above declared, that the conditions and circumstances upon which the ordinance bears are proper subjects of evidence, may be cited *Yick Wo. v. Hopkins*, 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. Ed. 220; *Tugman v. Chicago*, 78 Ill. 405; *Oxanna v. Allen*, (Ala.) 8 South. 79; *People v. Armstrong*, 73 Mich. 288, 41 N. W. 275; 2 L. R. A. 721, 16 Am. St. Rep. 578; *Ex parte Patterson* (Tex. Civ. App.) 58 S. W. 1011, 51 L. R. A. 654; *Cleveland Railway Co. v. Connersville* (Ind. Sup.) 46 N. E. 579, 37 L. R. A. 175, 62 Am. St. Rep. 418; *Pieri v. Mayor, etc., of Shieldsboro*, 42 Miss. 493; *Town of Kosciusko v. Slomberg*, 68 Miss. 469, 9 South. 297, 12 L. R. A. 528, 24 Am. St. Rep. 281; *Corrigan v. Gage*, 68 Mo. 541.

When, finally, we come to apply these principles to the

ordinance in question, the need of discussion is at an end. It is manifest that the ordinance is unreasonable and oppressive, works an invasion of the petitioner's constitutional rights, and is therefore void. The ordinance being void, the criminal proceedings against petitioner founded upon the ordinance are likewise void.

It is therefore ordered that the petitioner be discharged from custody.

We concur: McFARLAND, J.; LORIGAN, J.; BEATTY, C. J.

SHAW, J. I concur in the opinion of Justice HENSHAW, and in the conclusion reached by him. The Court will take judicial notice of the fact that the County of Los Angeles is a large territory, consisting of several thousand square miles, large portions of which are very sparsely settled, and within which are a number of cities and villages, ranging in population from over 100,000 to a few hundred, and many districts of thickly settled farming communities. It appears from the face of the ordinance that the Board of Supervisors selected from all this territory, having these varying conditions, a small district, comprising but 200 or 300 acres, lying between the cities of Pasadena and South Pasadena on the one side and the City of Los Angeles on the other, and, ignoring the welfare and comfort of all the other territory of the county outside of incorporated cities, made it unlawful to erect or maintain gas works within this particular district. Another fact, so obvious that I think the Court can either take judicial notice of it or assume it to be true, is that there are very many other districts within the county of equal or greater extent, within which the erection or maintenance of gas works would be equally detrimental to the inhabitants thereof. It is admitted that at the time this ordinance was passed the petitioner and others acting with him had already, at great expense, erected gas works in this district, wherein they were manufacturing gas for sale and distribution to the public, and that the district is sparsely settled, having no places of residence within 300 yards of the gas works, and only 15 in all. Under these circumstances I think the Court is justified in holding that the ordinance in question was

manifestly intended to prohibit and suppress the particular business of the petitioner; that it was not a reasonable or *bona fide* exercise of the police power for the welfare and comfort of the inhabitants of the district or of the county, but an attempt, under color of the police power, to create an unjust, arbitrary and unreasonable discrimination against the enterprise in which the petitioner was engaged; and that for that reason it is unconstitutional and void.

I concur: ANGELLOTTI, J.

**The motives which actuate a municipal council in the adoption of ordinances are material as showing the objects and purposes for which the ordinances were adopted.**

The paragraph of the opinion of the Court below which is devoted to a discussion of the materiality of our allegations concerning the motives which actuated the municipal council of the City of Los Angeles cites as authority for the position taken Cooley's Constitutional Limitations and the case of *Soon Hing v. Crowley*, 113 U. S. 703. As to the correctness of the general proposition enunciated by Judge Cooley in the quotation referred to by that Court, we have no doubt, but the principle laid down by him and the cases cited in support of it will, upon an examination, be seen to relate to a case in which a valid law enacted with full power by a *legislative body* is attacked solely on the ground that the motives of that legislative body were improper. We have never in this case contended for any different principle of law. We recognize that if a state legislature having full power to enact a valid law does so under the influence of motives, no matter how improper or illegal, the law itself will be valid. What we do say, is that if a *quasi legislative body of a municipal corporation* enacts an ordinance which has for its purpose an object which in itself is not recognized by law, the motives actuating such quasi legislative body may be shown

in order that "the purpose and object" of the enactment may be determined so that the reasonableness of that purpose and object may be ascertained. In support of this proposition we cite this Court to Cooley's Constitutional Limitation (6th Ed.) page 247, where it is said: "And a by-law which assumes to be a police regulation, but deprives a party of the use of his property without regard to the public good under the pretense of the preservation of health, when it is manifest that such is not the object and purpose of the regulation, will be set aside as a clear and direct infringement of the right of property without any compensating damages." If, in our presentation of this question to this Court, we use the term "motive," in reference to the influence which was exerted upon the municipal council of the City of Los Angeles, it is not employed with the significance attached to it that is given by the Court below. All we say now, and all we have ever meant to say, is that as evidence of the purpose of municipal legislation it is competent to show that the municipal legislature desired and intended to discriminate between different classes of persons or different persons in the same class. We think we have established, by the cases cited under the last point, the fact that if an ordinance in its effect accomplishes unreasonable results the ordinance is invalid, and the safest guide to determining the effect of an ordinance such as the one under consideration is, we think, first, its actual operation, and, second, facts which show that the municipal authorities intend that it should operate in the unjust and discriminatory way in which it does. It is probably true that for the enactment of an unjust and discriminatory measure by a municipal corporation one remedy is to be found at the polls, but the case of *Soon Hing v. Crowley, supra,* cited in this connection by the Court below, was on this very proposition overruled by *Yick Wo v. Hopkins,* 118 U. S. 356. There an ordi-

nance of the City and County of San Francisco was under consideration. The ordinance provided that it should be unlawful to maintain and carry on laundries in certain designated buildings in said city. After practically holding that the ordinance on its face was a good ordinance, and that the subject of the legislation was within the police power, this Court discussed a question which comes very close to the motives of municipal legislatures in enacting laws. This Court said: "In the present cases we are not obliged to reason from the probable to the actual and pass upon the validity of the ordinance complained of as tried merely by the opportunities which their terms afford of unequal and unjust discrimination in their administration, for the cases present the ordinances' in actual operation and the facts shown establish an administration directed so exclusively against a particular class of persons, as to warrant and require the conclusion that *whatever may have been the intent of the ordinance as adopted*, they are applied by the public authorities charged with their administration, and thus representing the state, with a *mind so unequal* and *oppressive* as to amount to a practical denial by the state of that equal protection of the laws, which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment of the Constitution of the United States. Though the law itself *be fair on its face* and *impartial in its appearance*, yet, if it is applied and administered by public authority with an *evil eye* and an *unequal hand* so as to practically make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution. * * * It appears that both petitioners have complied with every requisite deemed by the law or by the public officers charged with its administration, necessary for the protection of neighboring property from fire or as a protection against injury to the public health. No reason whatever, except the *will of the supervisors*, is assigned why they should not be permitted to carry on in the customary manner their harmless and useful occupation on which they

depend for a livelihood, and while this consent of the supervisors is withheld from them and from two hundred others who have complained, all of whom happen to be Chinese subjects, eighty others not Chinese subjects, are permitted to carry on the same business under similar conditions. No reason for it is shown, and the conclusion cannot be resisted that no reason for it exists, except hostility to the race and nationality to which the petitioners belong, and which, in the eye of the law, is not justified. The discrimination is, therefore, illegal; and the public administration which enforces it is *a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution.*" (See also *Matter of Ho Ah Kow*, Federal case No. 6546. Opinion by Mr. Justice Field.)

Will the law justify and sustain an ordinance which, though more adroitly drawn and speciously framed, brings about the same discrimination between citizens which is so unsparingly condemned in the case above cited? Can the conclusion be resisted that in the case at bar the plaintiffs in error have been denied that equal protection of the law which is assured them by the provisions of the Federal Constitution? This Court will not assert that an ordinance, which was framed solely for the purpose of driving this plaintiff in error, Mrs. Dobbins, out of a lawful business, is to be upheld merely because the object and purpose of its adoption, which we have shown, and which is admitted by the demurrer, was an improper one, could not be inquired into if the measure under consideration had been adopted by a state legislature, unhampered by the limitation that its enactment should be *reasonable*.

So far has this Court gone in preventing discriminatory legislation that it has extended the above doctrine to all branches of the government, executive, legislative and judicial, and held that where an agent of the state, in whatever department, violates the Fourteenth Amendment of

the Constitution and discriminates between citizens, it is the act of the state itself, and therefore void. See *C. B. & Q. R. R. v. Chicago*, 166 U. S. 234, and cases there cited.

The Court below decided that it is a proper exercise of the police power to regulate the manufacture of gas. This proposition we have never controverted, but have always expressly admitted. What we do say, is that an ordinance within the police power, if unreasonable, if prohibitive, if passed for the purpose of sustaining a monopoly and discriminating between citizens in violation of the Fourteenth Amendment to the Federal Constitution, is invalid and of no effect, even though the general subject covered by the ordinance is one within the police power of a municipality to regulate.

**The Act of the State Legislature of California of April 4, 1870, entitled "An Act concerning Gas Works," cannot limit the effect of the constitutional provision.**

The act above referred to (Statutes of 1869 and 1870, page 815) is referred to by the Court below as conferring power upon the municipality to "control the location and construction of works so that they may be erected on suitable localities to give the least discomfort or annoyance to the public." The act itself, and Subdivision 20 of Section 19 of the Political Code continuing it in force, were both adopted long prior to the constitutional amendment. There are other rights and privileges conferred upon the municipality by that statute which would, if permitted to prevail at this time, undoubtedly override the Constitution. We are not aware of any reason why, under that statute of 1870, a gas company could not be granted a limited franchise by a municipality to distribute gas to the citizens of the city for the sole purpose of illumination and prohibiting the gas company from selling or collecting any tolls or

rates for gas used by the citizens for any other than illuminating purposes. Yet, the case of *ex parte* Johnston *supra* establishes the rule that, since the adoption of the Constitution, any attempt on the part of the city to limit the exercise of the franchise thereby conferred is absolutely void. We do not think that a fair construction of that portion of the act of 1870 referred to by the Court below will result in sustaining the right to arbitrarily and without any reason locate the works in one portion of a city, and then, when the works are half built, recall its direction as to location, change its municipal mind, as to where the best place to locate them may be, compel the abandonment of the property and the loss of the investment already made, simply because the act says that the city may in the first instance locate; and yet, that is exactly what was done to this plaintiff here. If the act of 1870 is still in existence and can override a constitutional provision adopted ten years afterwards, it amounts merely that they may provide one location for it and after that they may keep changing the locations after large sums of money have been spent on them, and continue so to do until the humble supplicant has been disheartened and financially ruined.

We contend that this act of April 4th, 1870, is not in full force, for the reason that the act itself and the act continuing it in force was adopted for the purpose of giving to individuals and corporations the privilege of supplying a municipality with gas under conditions that might be prescribed by municipal authorities as to the use of the streets and thoroughfares thereof, and that the right to designate the place within said city limits where gas works should be erected was simply a condition annexed to the license; and that by the adoption by the people of the State of California of Section 19 of Article XI of the Constitution of that State in 1879, they by implication repealed the act

of the Legislature of April 4th, 1870, by granting a franchise independent of the consent of the municipality. Under the present Constitution the necessity of the provisions of that act as to securing the franchise from the municipality no longer exist, and the right of the municipality to impose as a condition of the grant the determination of the location of the gas works has been abrogated.

By the people of the State of California in their Constitution giving to every individual or corporation organized for that purpose the use of public streets for the purpose of laying down pipes and conduits therein for the purpose of supplying the municipality with gas, they impliedly repealed previous acts of the Legislature covering and intended to cover the same subject. In the Constitution there are no conditions to the grant. The people of the State of California by the adoption of the Constitution chose to take away from the municipality the power to grant or refuse permission to use the public streets with or without any condition whatsoever. (*Ex parte Johnston, supra, People v. Stephens,* 62 Cal. 209.) And the Constitution having given this right to use the public streets and thoroughfares of the municipality, it carried with it the implied right to any individual to erect and maintain gas works at any place within the limits of the municipality which the individual might select; and it is submitted that if the City Council have authority to pass a law limiting the district in which it shall be lawful to erect gas works, that by continuous limitation and exercise of that power they could abrogate and nullify this provision of the Constitution of this State.

The people of the State of California, with a law upon the statute books authorizing the municipality to grant the privilege to individuals to use the public thoroughfares for the purpose of supplying the cities with gas, coupled with the right to control the place of the location of the gas

works, chose to take away from the municipality any voice in the matter, and by an absolute constitutional grant gave to every individual or corporation organized for that purpose the right to use the public streets without any condition whatsoever as to the place or places in which the gas works should be erected.

Further on herein we state fully our position concerning vested rights, and will not discuss that point here further than to say that the authority referred to by the Court below, *Fertilizing Company v. Hyde Park*, 97 U. S. 659, merely holds that the State cannot estop itself from exercising its police power in a proper case. A perusal of the opinion will show that the nuisance abated in that case was of the most extreme type imaginable, and the principles there enunciated support the contention that we have always advanced here, that when our gas works in fact become a nuisance to such an extent that their operation nauseates the inhabitants of the surrounding territory and, in addition to rendering life unbearable in their immediate vicinity, cause sickness and disease, the State may prevent their further operation; but until our works become a nuisance in fact, the municipality cannot anticipate, with the aid of their imagination, that that condition will inevitably arrive. But without regard to the question as to whether we have any vested rights or not which protect us from the exercise of the police power, we do contend that whether in violation of the Constitution or in the exercise of the power sought to be conferred by the Act of 1870, the municipality cannot, after having designated certain property upon which we should build our works, revoke that designation and, without any reason being shown for it, deny us the privilege of operating works which have been nearly completed under their express direction and control, and that, on the theory, not that the works themselves will in

any way affect the health, safety and welfare of the community, but because the gas, when made, may prove injurious to the public health and safety.

We have thus far discussed the opinion rendered by the Court below in rendering the judgments, to reverse which these writs of error are prosecuted. We desire now to discuss the questions which are presented directly by the assignment and specification of errors herein.

**FIRST: THE ORDINANCE OF AUGUST 26, 1901, IS A VOID AND INVALID ORDINANCE FOR THE FOLLOWING REASONS:**

**1. It is in violation of the rights and privileges and immunities of a citizen to carry on a lawful occupation within the City of Los Angeles.**

The ordinance provides that it shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained any works, establishment, manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the City of Los Angeles outside of the limits of the described district. We contend that this is in violation of our rights as guaranteed to us by the Constitution of the State of California and by the Fourteenth Amendment to the Constitution of the United States.

The Constitution of the State of California, Section 19, Article XI, provides that "In any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this state, shall, under the direction of the Superintendent of Streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe, for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes

and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight, or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof."

It is in the record of these cases that there are no public works owned or controlled by the City of Los Angeles for supplying the same with artificial light.

In reference to this provision of the Constitution of the State of California, the Supreme Court of the State of California, *ex parte Johnston*, 137 Cal. 115, said:

> "In *People v. Stephens*, 62 Cal. 209, the above section was construed by this Court, and was held to be a direct grant from the people to the persons therein designated, of the right to lay pipes in the streets of a city for the purposes specified, without waiting for legislative authority, or being subject to any restrictions from that branch of the government, the Court saying, with reference to the privilege of laying pipes in the public streets and thoroughfares of any city: "That privilege is expressly granted by the section of the constitution cited, subject to the direction of the Superintendent of Streets or other officer in control thereof, and under such general regulation as the municipality may prescribe for damages, and indemnity for damage, and upon the condition that the municipal government shall have the right to regulate the charges thereof." The only limitations upon this privilege are those contained in the language in which it is granted, viz., that the work shall be done "under the direction of the Superintendent of Streets, or other officer in control thereof," and "under such general regulations as the municipality may prescribe for damages and indemnity for damages." Upon a compliance with these conditions any individual or company duly incorporated for such purpose is given the privilege "of using the public streets and thoroughfares thereof, and of

laying down pipes and conduits therein, as far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes." The municipality may prescribe regulations "for damages and indemnity for damages," but these regulations must be "general," i. e., uniform in their application to all who may desire to exercise the privilege.

The designation of "damages and indemnity for damages" as the subject upon which the municipality may prescribe regulations in regard to laying the pipes is a limitation upon its authority over the matter, and a prohibition from prescribing regulations upon any other subject connected with the exercise of the privilege. When the sovereign authority of the state, either in its constitution or through its legislature, has created a right and expressed and defined the conditions under which it may be enjoyed, it is not within the province of a municipality where such right is sought to be exercised or enjoyed, to impose additional burdens or terms as a condition to its exercise. The constitution does not authorize the municipality to require a permit as a condition upon which the pipes may be laid in its streets, and its claim of a right to require a permit includes the right to refuse one, and the right to annex one condition to the exercise of the privilege implies the right to annex others which may, at least, impair if not in fact amount to a denial of its exercise. The provision that the work is to be done under the direction of the Superintendent of Streets gives all the protection for the use of the streets that could be obtained under a permit; and, under the provision authorizing the municipality to prescribe regulations for damages and indemnity for damages, the city will be fully protected against any pecuniary loss or detriment. Under the statutes of New Jersey any telephone company was authorized to use the public roads and highways on the line of its route, for the purpose of erecting poles thereon to suspend its wires and other fixtures,

upon first obtaining the consent of the owner of the soil, with the proviso that the use of the public streets in any incorporated cities and towns of the state should be subject to such regulations and restrictions as might be imposed by the corporate authorities of said cities and towns. The authorities of the township of Summit passed an ordinance that no wire should be stretched across any public street without the permission of the township committee. In an action to restrain a telephone company from stretching its wires across certain streets of the township, the Court held that this ordinance was not a "regulation or restriction" under the statute and was therefore, invalid, saying: "A right to prevent the use of the streets for suspending wires, unless previous consent is obtained, if such right be lawfully conferred, authorizes a refusal to consent at discretion and confers a virtual power of prohibition. The right to the use of the streets has been expressly granted by the legislature, and the power to prohibit or interdict this use so granted cannot be inferred from the declaration in the proviso annexed to the grant, that the use should be subject to such regulations and restrictions as may be imposed. The restrictions intended in such a proviso must be held to be restrictions in the nature of regulations, and not restrictions which shall prohibit the use, or impose new conditions to the power to exercise the franchise." (*Township of Summit vs. N. Y. & N. J. Tel. Co.*, 57 N. J. Equity, 123.) A charter was granted to a gas company by the legislature of Georgia, in which it was authorized to use the streets of the City of Atlanta, for laying its pipes and fixtures therein, with the proviso "that the public thoroughfares shall at no time be unnecessarily interrupted or impeded by the laying down or erection thereof, and that said streets shall not be thereby injured, but shall be left in as good state and condition as they were before the laying down of said pipes." The City of Atlanta having passed an ordinance requiring any person who desired to excavate any street for the purpose of laying gas

pipes, or for any other purpose, to procure a written permission therefor from the City Engineer, under the penalty of fine and imprisonment, the gas company obtained an injunction against any interference with it on the part of the city authorities in laying the pipes in the streets, and the same was affirmed on appeal, the Supreme Court saying: "The permission of the City of Atlanta was not required to enable the complainant to exercise its franchise. It certainly was not made a condition by its charter. This was not the contract into which it entered with the state, and it would appear anomalous if a subordinate power could impose terms which the superior did not see proper to impose." (*City of Atlanta vs. The Gate City Gaslight Co.*, 71 Ga. 106.) The same principle has been followed elsewhere. (*Michigan Telephone Company vs. City of Benton Harbor*, 121 Mich. 512; *Wisconsin Telephone Company vs. City of Oshkosh*, 62 Wis. 32; *Appeal of the City of Pittsburg*, 115 Pa. 4; *Borrough of Millvale vs. Evergreen Railway Co.*, 131 Pa. 1; *Harrisburg City R. R. Co. vs. City of Harrisburg*, 149 Pa. 465; *State vs. Flad*, 23 Mo. App. 185; *Hodges vs. Telegraph Co.*, 72 Miss. 910.) In *Borrough of Millvale vs. Evergreen Railway Co., supra*, the court said: "The power of the defendant in the exercise of its franchise is altogether independent of the Borrough, and is of just as high and authoritative origin as the right of the Burrough to exist at all. The rights of both are derived from the same source, to-wit: the legislative power of the commonwealth, and the company is not subject to the slightest obligation to go to the Borrough for consent to exercise any part of its corporate franchise. Any other doctrine would subordinate the corporate franchise of the defendant to the will of the Borrough council, and cannot be sanctioned for a moment."

The ordinance in question is not an exercise of the police power, nor can it be justified under that authority. The exercise by a municipality of the police power over its streets is limited to the protection of the pub-

lic in their use of the street and does not include a limitation upon their use for any legitimate purpose. The highways of a state, including the streets in its cities, are under the control of the people of the state, and in this state the people have declared in their constitution that the streets of a city may be used for laying pipes therein for supplying its inhabitants with gaslight. Under the provision that the work shall be done "under the direction of the Superintendent of Streets, ample protection is afforded to the inhabitants of the city against any unnecessary encroachment or hindrance in their use of the streets.

The suggestion on the part of the respondent that it is the purpose of the corporation herein to supply gas through its pipes for other purposes than light, even if founded upon fact, does not deprive it from exercising the right conferred upon it by the constitution, or authorize the municipality to prevent it from enjoying that right. Even though the pipes when laid may be available for other purposes than supplying gaslight, the corporation is not thereby deprived of the right which the constitution has given it to lay its pipes in the streets, nor can it be required as a condition of exercising that right to declare that the gas to be supplied by it shall be used exclusively for illumination, or is to be supplied solely for such use."

The full scope and effect of the foregoing provision of the Constitution of the State of California is thus given effect by the decision of the Supreme Court of California. But if the City of Los Angeles has within itself a power to prescribe a district in which it shall be unlawful to erect gas works, it has it within its power to so continue to limit that district until it shall say that within the City of Los Angeles there shall be no works erected or maintained for the manufacture of gas, and thus in effect nullify the grant given by the Constitution that a person should have the right to use the streets for supplying gas by destroying the implied right that follows therefrom to manufacture gas

for the purpose of supplying the inhabitants of the municipality with the same.

If the City of Los Angeles has the power by thus prescribing the limits of a district in which no works shall be erected for the manufacture of gas, it must follow that other municipal corporations within the County of Los Angeles can do likewise, and also the Board of Supervisors, and thus make it impossible for any person to erect gas works within the County of Los Angeles, notwithstanding those provisions of the Constitution of the State of California in reference to the use of the streets for the purpose of laying pipes therein. This cannot be done.

As was said in the case of *ex parte Johnston, supra,* "When the sovereign authority of a State either in its Constitution or through its legislature has created a right, and expressed and defined the conditions under which it may be enjoyed, it is not within the providence of a municipality where such right is sought to be exercised or enjoyed to impose additional burdens as a condition to its exercise * * * and the right to annex one condition to the exercise of the privilege implies a right to annex others which may at least impair, if not in fact amount to a denial of its exercise. The right to make restrictions must be held to be restrictions in the nature of regulations and not restrictions which shall prohibit the use or impose new conditions to the power to exercise the right."

It would be useless to have the right to lay pipes in the street without the power to erect works for the manufacture of gas with which, through such pipes, to supply the inhabitants of the city therewith. The use of the streets would only be an exercise of a part of a corporate franchise and as was said in the case of *Milkvale vs. Evergreen Railroad Company, supra,* "Any other doctrine would subordinate the corporate franchise of the defendant to the will of the borrough council, and cannot be sanctioned for a moment."

The use of the streets is but an incident to the right to manufacture and distribute gas, and it cannot be said that the incident shall be greater than the whole. It is only a part of the entire enterprise which must have been contemplated by the framers of the Constitution of the State of California.

We present this question to the consideration of this Court because we believe that under the provisions of the Constitution, Section 19 of Article XI, there is an implied power granted to every person; an implied franchise constitutionally given to every person to erect gas works within cities in California and to construct and maintain them.

The power of introducing into and supplying the city with gas carries with it the implied power to construct within the city—not in some outlying district which cannot be connected with it—gas works for that purpose. Without this right the provisions of the Constitution of the State of California as to supplying gas are rendered absolutely nugatory; for as the provision does not apply except to cities or like municipalities the attempt to exclude gas works from such cities destroys the right to supply gas under the constitutional franchise and of using the streets to supply the city and its inhabitants with gas.

Before concluding the discussion of this point we desire to direct the attention of this Court to the sweeping and prohibitory character of this ordinance in its attempted effect upon the right of citizens to make and store gas for useful purposes. The ordinance does not regulate the manner in which gas is to be manufactured, nor does it direct the method in which gas shall be stored, nor limit the amount of gas which shall be made or stored, but under its terms the making and storage of gas, except within the favored boundaries, must be absolutely stopped. The resident in the sparsely settled districts of the city, remote from

the gas mains of the Los Angeles Lighting Company, is debarred from illuminating his house by means of any of the numerous gas-making machines which have been safely used for years, and which are now in use in many residences in the City of Los Angeles.

**2. We contend next that the ordinance is void in that it is unreasonable because it does not describe the district by any geographical or natural boundary or by any reasonable designation.**

It goes to the reasonableness of this ordinance that it describes the district by irregular and arbitrary boundaries for the sole purpose of protecting certain interests that are already established within said boundaries—those operated by the Los Angeles Lighting Company. By an examination of the ordinance of August 26th, 1901, it will be observed that the boundary lines are drawn without any regard to any natural or geographical lines. While the eastern boundary line was the Los Angeles river and the southern boundary line the city limits of the City of Los Angeles, the western boundary line was an irregular line running through the line of Santa Fe avenue to the center line of Violet street; thence west along the center line of Violet street to the center line of Wilson street; then north along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence

easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street. This western boundary was an irregular line, and as we claim, was laid out and designated for the purpose of protecting the existing works of the Los Angeles Lighting Company.

If the ordinance is unreasonable it is invalid, as we have already shown.

**3. This ordinance is invalid because it is an attempt on the part of the City Council of the City of Los Angeles to define and make that a nuisance which is not a nuisance per se.**

It is our contention that it is not within the power of the City of Los Angeles to adopt any ordinance which will make a nuisance of that which is not a nuisance *per se*, nor could such a declaration make it a nuisance unless it in fact had that character; and that the City Council may not by a mere resolution or motion declare a particular thing a nuisance which has not been theretofore pronounced such by law or so adjudged by judicial determination.

The ordinances in question make it unlawful to erect or maintain any works for the manufacture of gas. In the erection of a gas works there certainly cannot be created a nuisance, and it cannot be determined by the mere passage of an ordinance that the maintenance of a gas works will be a nuisance. The allegations of the bill and petition in these cases are that in its maintenance it will not interfere in any way with the health, comfort, safety or welfare of the inhabitants of the district in which it is located, or of the City of Los Angeles.

We contend that this ordinance is too sweeping and too broad and that there is nothing in the law or in the charter provisions of the City of Los Angeles or in the Constitution of this State that authorized the City of Los Angeles to pass an ordinance which makes that a nuisance which is not a nuisance *per se;* that in the erection of gas works in itself there is no nuisance, and we assert that the courts have decided in many cases that the mere designation of the legislative body that a certain thing is a nuisance which is not a nuisance or which the courts have not determined to be a nuisance does not make it a nuisance, and the legislative act is in that respect always subject to judicial scrutiny and revision.

This Court, in the case of *Yates v. Milwaukee,* 10 Wall. 497, said:

"The act of the Wisconsin Legislature, approved March 31st, 1854, confers upon the City of Milwaukee the authority to establish dock and wharf lines on the banks of the Milwaukee and Menomonee rivers, and restrain and prevent encroachments upon said rivers and obstructions thereto, and it is said by this statute that the summary proceedings for the removal of appellant's wharf are supposed to be authorized. But the mere declaration by the City Council of Milwaukee that a certain structure was an encroachment or obstruction did not make it so, nor could such declaration make it a nuisance unless it in fact had that character. It is a doctrine not to be tolerated in this country, that a municipal corporation, without any general laws either of the city or of the State, within which a given structure can be shown to be a nuisance, can, by its mere declaration that it is one, subject it to removal by any person supposed to be aggrieved, or even by the city itself. This would place every house, every business, and all the property of the city, at the uncontrolled will of the temporary local authorities. Yet this seems to have been the view taken by counsel who defended this case in the Circuit Court; for that single ordinance of the city, declaring the

wharf of Yates a nuisance, and ordering its abatement, is the only evidence in the record that it is a nuisance or an obstruction to navigation, or in any manner injurious to the public."

The same doctrine is laid down in the *C. R. I & P. R. R. v. Joliet*, 79 Ill. 25, 44; *Everett v. Council Bluffs*, 46 Iowa, 66.

The case of the *City of Denver v. Mullen*, (Colo.) 3 Pacific Rep. 693, was an action brought against the City of Denver for an injunction to restrain it from interfering with the flow of the water in the Platt and Denver ditch. The basis of authority for the action of the city in the premises was made to rest upon certain provisions of the city charter and certain ordinances authorizing the city "to make regulations to secure the general health of the inhabitants, to declare what shall be a nuisance, and to prevent and remove the same."

The Supreme Court of Colorado in deciding this case said:

"The proper construction of this language is that the city is clothed with authority to declare by general ordinance what shall constitute a nuisance; that is to say, the city may by such ordinance define, classify and enact what things or classes of things and under what conditions and circumstances such specified things, are to constitute and be deemed, nuisances. For instance, the city might under such authority, declare by ordinance that slaughter-houses within the limits of the city, carcasses of dead animals left lying within the city, goods, boxes, and the like, piled up or remaining for a certain length of time on the sidewalks, or other things injurious to health, or causing obstruction or danger to the public in the use of the streets and sidewalks, should be deemed nuisances; not that the City Council may, by a mere resolution or motion, declare any particular thing a nuisance which has not theretofore been pronounced to be such by law, or so adjudged by judicial de-

termination. *Everett v. Council Bluffs*, 46 Iowa, 66; *Yates v. Milwaukee*, 10 Wall. 497. * * *

"It is only certain kinds of nuisances that may be removed or abated by the acts of individuals or by the public, such as those which affect the health or interfere with the safety of property or person, or are tangible obstructions to streets and highways under circumstances presenting an emergency. Such clear cases of nuisances *per se* are well understood, and need not be further noticed here, to distinguish them from the cases before us. If it were admitted that this ditch, by reason of its obstruction to the use of the public streets at the time of the acts complained of, was a nuisance, it must also be admitted that it was not a nuisance *per se*. It was constructed for a necessary, useful, and lawful purpose, was used for such purpose and therefore in its nature was not a nuisance, as a matter of law. Nor, as a matter of fact, was it a nuisance while it was no hurt, detriment, or offense to the public, or to any private citizen. If, then, it has become a nuisance, it is by reason of a change of circumstances brought about, neither by the ditch itself nor its use."

In *ex parte Sing Lee*, 96 Cal. 354, it appears that the petitioner had been arrested for violating an ordinance making it unlawful to establish, maintain and carry on the business of a public laundry, without first having obtained the permit of the Board of Trustees. Of this ordinance the Supreme Court of California said:

"It is provided by Sec. 11 of Article XI of the Constitution of this State, that 'any county, city, town or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws,' and it is argued here, in behalf of the respondent, that the ordinance in question is a police regulation, and therefore one which the town of Chico was authorized to enact by this section of the Constitution. The power conferred upon cities and towns by the section just quoted is undoubtedly a very broad and comprehensive one, and would sustain the enactment of any ordinance having

a reasonable tendency to promote the health, the comfort, safety and welfare of the inhabitants of the municipality, and which would not be in conflict with some general law of the State. But, broad as is this power, the ordinance before us cannot be considered as falling within the limits of its proper exercise.

"The business of conducting a laundry is a lawful occupation, precisely as much so as is that of the carpenter, blacksmith, or merchant, and is not of itself, and irrespective of the manner in which it is conducted, offensive or dangerous to the health of those living within its vicinity. * * *"

The case of the *County of Los Angeles v. The Hollywood Cemetery Association,* 124 Cal. 344, was a bill for an injunction to restrain the defendant from establishing a cemetery upon certain lands, in violation of the ordinance prohibiting the location or establishing of a cemetery within the limits of the County of Los Angeles without permission of the Board of Supervisors. It was held in that case that the ordinance was not a reasonable exercise of the police power and that it was not unlawful to establish a cemetery for the burial of the dead, deriving profit therefrom, as a business enterprise.

*Grossman v. Oakland,* 30 Oregon, 478.
*Stockton Laundry Case,* 31 Fed. 680.
*In re Hong Wah,* 82 Fed. Rep. 623, 624-626.
*Ex parte Whitall,* 98 Cal. 73.
*Wood on Nuisances,* Sec. 744.

The Charter of the City of Los Angeles gives the right to designate what are nuisances and to abate them, but we say that a power *to abate* does not include the power *to prevent.* That the power to abate may some times include the power to prevent must be conceded, but it is only in those cases where a thing sought to be prevented is a nuisance

*per se*, and those things which only become a nuisance because of the method of their operation cannot be prevented and stopped under the power simply to abate until it has been demonstrated that they are nuisances.

This point was decided by the Supreme Court of the State of Illinois in the case of *Lakeview v. Letz*, 44 Ill. 81-83, where the Court said:

"Various powers for municipal government were conferred upon them, and among others the power 'to abate and remove nuisances, and punish the authors thereof by penalties, fines and imprisonment, and to authorize and direct the summary abatement thereof.' * * * * The act of the legislature authorizing the board of trustees 'to abate and remove nuisances,' gave them no power to pass an ordinance forbidding the establishment of a cemetery. Conceding that the power to 'abate and remove' should be construed as including the power to prevent, yet this preventive power could only be exercised in reference to those things which in their nature are nuisances in themselves, and necessarily so. There are some things which in their natures are nuisances, and which the law recognizes as such. There are others which may or may not be so, their character in this respect depending on circumstances. Now, the town of Lake View is a rural township, containing about eleven sections or square miles of territory. It is therefore impossible to hold, that a cemetery anywhere within the limits of the town, must necessarily be a nuisance, and can be prohibited in advance as such. A cemetery may be so placed as to be injurious to the public health, and therefore a nuisance. It may, on the other hand, be so located and arranged, so planted with trees and flowering shrubs, intersected with drives and walks, and decorated with monumental marbles, as to be not less beautiful than a public landscape garden, and as free from all reasonable objection. The power to prohibit the establishment of cemeteries except by the authority of the trustees cannot be considered as falling within the power to abate and remove nuisances."

Enough has been said to show that this ordinance of August 26th, 1901, is unreasonable and too sweeping. It is unreasonable and too broad from the fact that it attempts to say that it is unlawful to erect gas works when it is shown that the gas works can be maintained in a most satisfactory condition, not only to the public authorities, but to all the surrounding inhabitants.

If the ordinance is in violation of the rights of the petitioners to engage in a lawful occupation; if the ordinance is unreasonable in the description of the district in which it is sought to limit the right to conduct gas works within the City of Los Angeles; if it is unreasonable on any other ground; if it is intended in its operation for the purpose of protecting only certain gas works and destroying all others; if it is beyond the power of the City Council to declare that a nuisance which is not a nuisance, then this ordinance of August 26th, 1902, is invalid and violates the rights, privileges and immunities of these plaintiffs in error.

And if this Court should hold that the ordinance of August 26th, 1901, is invalid, then it must follow that the ordinance of March 3rd, 1902, which is an amendment to it, must also be invalid and void and it will be so declared by this Court.

It is not necessary for this Court to consider specifically the ordinance number 6779, attempted to be adopted by the City Council of the City of Los Angeles, November 25th, 1901, as an amendment to section one of the ordinance of August 26th, 1901, for the reason that an examination of that ordinance will disclose that the designated boundaries therein mentioned do not describe a district. The boundaries are not tied together, and the gap in the description of over one thousand feet of itself rendering the ordinance invalid for indefiniteness. Recognizing this fact, the City

Council of the City of Los Angeles adopted the ordinance number 28[illegible] of March 3rd, 1902, the effect of which was to repeal the ordinance of November 25th, 1901, attempting to cover the same subject matter.

The ordinances are on the same subject matter. The latter covers the whole subject matter of the earlier ordinance, and while not purporting to amend, it plainly shows that it was intended as a substitute for the earlier act. "Such an ordinance will repeal the former ordinance covering the same subject."

*23 Am. & Eng. Encyclopedia of Law, 449.*

**SECOND: IF THIS COURT SHOULD HOLD THAT THE ORDINANCE OF AUGUST 30TH, 1901, IS A VALID ORDINANCE, THEN WE CONTEND THAT THE ORDINANCE OF MARCH 3, 1902, IS INVALID FOR THE REASON THAT IT IS IN VIOLATION OF THE VESTED RIGHTS ACQUIRED BY THE PLAINTIFF IN ERROR, CAROLINE W. SWANWICK, BY VIRTUE OF HER PURCHASE OF LAND WITHIN THE LIMITS OF THE DISTRICT WITHIN WHICH IT WAS LAWFUL TO ERECT SUCH WORKS AS THOSE TERMS OF THE ORDINANCE OF AUGUST 30TH, 1901, AND BY VIRTUE OF THE PERMIT GRANTED TO HER BY THE BOARD OF FIRE COMMISSIONERS OF THE CITY OF LOS ANGELES ON THE 27TH DAY OF NOVEMBER, 1901, UNDER THE BUILDING AND FIRE ORDINANCE.**

There has been no dispute or controversy, and can be none, between the counsel for the plaintiffs in error and the counsel for the City of Los Angeles as to the fact that Mrs. Swanwick acquired vested rights by virtue of her purchase under legislative authority, on the 25th day of September,

1901, of the land within the district described in the ordinance of August 26th, 1901, in which it was lawful to erect gas works; by the permit that she received from the Board of Fire Commissioners on the 22nd day of November, 1901, by the acceptance of that permit and the expenditure by her thereunder of large sums of money prior to the passage of the ordinance of March 3rd, 1902.

It is not necessary in the statement of our case to set forth and enlarge upon what we consider to be the vested rights of the plaintiff in error, Mrs. Dobbins.

It is sufficient, however, for the purpose of this argument, to say that all the acts of the said plaintiff in error were with a view of abiding by and conforming to the terms of the ordinances existing in the City of Los Angeles prior to the 3rd day of March, 1902.

It is true that the gas works had not been completed at the time of filing the complaint herein, and that it was necessary to continue the work thereon for three to four weeks longer in order to complete them, but there is no difference in law between executory and executed contracts so far as the power of the city to pass any law impairing their obligations. The rights acquired by Mrs. Dobbins were vested rights, privileges and immunities and having been by her lawfully obtained, accepted and acted under, they are vested rights and are as inviolable as any rights of property whatever.

In defining what is a vested right, Mr. Justice Chase in the case of *Calder v. Bull*, 3 Dall 394, has said: "When I say that a right is vested in a citizen I mean that he has the power to do certain actions or possess certain things according to the law of the land."

As has been well said "everything which may pass under the form of an enactment is not to be considered the law of

the land" and we contend that the ordinance of March 3rd, 1902, is not "the law of the land."

In the case of *Farrington v. Tennessee*, 95 U. S. 679, Mr. Justice Swayne, delivering the opinion of the court said:

"A compact lies at the foundation of all national life. Contracts mark the progress of communities in civilization and prosperity. They guard, as far as is possible, against the fluctuations of human affairs. They seek to give stability to the present and certainty to the future. They gauge the confidence of man in the truthfulness and integrity of his fellowmen. They are the springs of business, trade and commerce. * * * *

"The Constitution of the United States wisely protects this interest, public and private, from invasion by State laws. It declares that 'no State shall * * * pass any * * * laws impairing the obligation of contracts.' Art. 1, Sec. 10. This limitation no member of the Union can overpass. It is one of the most important functions of this tribunal to apply and enforce it upon all proper occasions. * * *

"Contracts are executed or executory. A contract is executed where everything that was to be done is done, and nothing remains to be done. A grant actually made is within this category. Such a contract requires no consideration to support it. A gift consummated is as valid in law as anything else. *Dartmouth College v. Woodward*, 4 Wheat. 518. An executory contract is one where it is stipulated by the agreement of minds, upon a sufficient consideration, that something is to be done or not to be done by one or both the parties. Only a slight consideration is necessary. *Pillans v. Van Mierop*, 3 Burr. 1663; *Fourth v. Stanton*, 1 Saund. 210, note 2, and the cases there cited.

*"The constitutional prohibition applies alike to both executory and executed contracts, by whomsoever made. The amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of this court to redress the wrong. Von Hoffman v. City of Quincy*, 4 Wall. 535.

"The doctrine of the sacredness of vested rights has its root deep in the common law of England, whence so much of our own has been transplanted. Kent, then chief justice, said: 'It is a principle of that law, as old as the law itself, that a statute even of its omnipotent Parliament is not to have a retrospective effect. *Nova constitutio futuris formam imponere debet et non preteritis.* Bracton, lib. 228; 2 Inst. 292. *Dash v. Van Kleeck*, 7 Johns. (N. Y.) 447. See also *Society, Etc., v. Wheeler et al*, 2 Gall. 105, and Broom's Legal Maxims, 34."

See also *Steamship Co. v. Joliff*, 2 Wall. 457.

*Worth v. Cransen*, 98 U. S. 118.

*Classen v. Chesapeake Guano Co.*, (Md.) 31 Atla. Rep. 808.

*Roberts v. Brooks*, 71 Fed. Rep. 914.

*Baltimore Trust Co. v. Baltimore*, 64 Fed. Rep. 153.

*Lewis v. City of Newton*, 75 Fed. Rep. 884.

*Cleveland City Railroad Co. v. City of Cleveland*, 94 Fed. Rep. 385.

*City Railway Company v. Citizens Street Railway Co.*, 166 U. S. 562.

Sufficient has been said in this case to show that the plaintiff in error, Mrs. Dobbins, had vested rights in the premises at the time of the adoption and passage of the ordinance of March 3rd, 1902.

**The ordinance is void as depriving the plaintiff in error, Caroline W. Dobbins, of property without due process of law.**

The plaintiff in error, Caroline W. Dobbins, did not acquire by the permit from the Fire Commissioners, an exclusive privilege; nor did she by the purchase of the real property, acquired by her within the district by which it was made lawful under the ordinance of August 26th, 1901,

to operate a gas works within the district described in the ordinance. But she having acquired that property and having secured the permit from the Fire Commissioners, to take from her that property and the right of using it, and enjoying it for all the purposes for which it was capable, was depriving her of the property without due process of law within the meaning of the Constitution of the State of California and of the Constitution of the United States by taking away one of the incidents of its ownershrip, the right to use it and the right thereon to pursue an honest business, which business in itself was lawful and recognized as such by the laws of the State of California. To impose proper restrictions upon the property in a proper exercise of the police power is one thing, but to absolutely prevent the use of the property for the purposes for which the said plaintiff in error had purchased it, was to deprive her of her property without due process of law.

The case of the *City of Chicago v. Netcher*, 183 Ill. 104, was an action by the City of Chicago against Charles Netcher for a violation of an ordinance which was directed against the class of stores known as "department stores" or general stores for the sale of different kinds of merchandise divided into separate departments, in the City of Chicago. In reference to the ordinance involved in this case, the Supreme Court of Illinois said:

"The ordinance is also an attempted interference by the city with rights guaranteed to the defendant by the constitutions of the United States and of this state. The questions involved are not new. They have been before this and other courts throughout this country in numerous cases, and the rights of the citizen, as against such interference, have been frequently defined, and uniformly upheld. These constitutions insure to every person, liberty and the protection of his property rights, and provide that he shall not be deprived of life, liberty or property without due

process of law. The liberty of the citizen includes the right to acquire property, to own and use it, to buy and sell it, It is a necessary incident to the ownership of property that the owner shall have a right to sell or barter it, and this right is protected by the constitutions as such an incident of ownership. When an owner is deprived of the right to expose for sale and sell his property, he is deprived of property, within the meaning of the constitution, by taking away one of the incidents of ownership. Liberty includes the right to pursue such honest calling or avocation as the citizen may choose, subject only to such restrictions as may be necessary for the protection of the public health, morals, safety, and welfare. The state, for the purpose of public protection, may, in the proper exercise of the police power, impose restrictions and regulations; but the right to acquire and dispose of property is subject only to that power. The individual may pursue, without let or hinderance from any one, all such callings or pursuits as are innocent in themselves, and not injurious to the public. These are fundamental rights of every person living under this government. The legislature can neither, by an enactment of its own, interfere with such rights, nor authorize a municipal corporation to do so. *Frorer v. People*, 141 Ill. 171, 31 N. E. 395; *Ramsey v. People*, 142 Ill. 380, 32 N. E. 364; *Braceville Coal Co. v. People*, 147 Ill. 66, 35 N. E. 62; Cooley, Const. Lim. 393."

But it will be contended on behalf of the defendant in error, that though said plaintiff in error had acquired vested rights, yet those vested rights are subject to *police regulations* and the *police power* of the State. It is contended therefore by defendant in error that this ordinance is a police regulation.

**The Ordinance of March 3, 1902, is not a proper execution of the police power.**

Should it be decided that it was within the power of the City Council to adopt the ordinance of August 26th, 1901, this question is as we take it one that deserves this Court's

gravest consideration, namely, whether or not the ordinance of March 3rd, 1902, is a proper police regulation.

It is our contention that this ordinance is not a police regulation and does not come within the power of the City of Los Angeles in reference to police regulations; that it is not within the police regulations as defined and recognized, and not within the sovereign police power of the State itself; and that therefore it is in violation of the vested rights acquired by plaintiff in error, Caroline W. Dobbins.

In discussing this question as to the police power of the State, where the vested rights are involved, and as to the duty and power of this Court, we desire to call the attention of this Court to the expression that is used by the Supreme Court of the State of New York in the case of *People v. Budd*, 117 N. Y. 1, where the Court said:

"The generality of terms employed by jurists and publicists in defining the power, while they show its breadth in and the universality of its presence, nevertheless leaves its boundaries and limitations indefinite, and impose upon the Court the necessity, as each case arises, to determine whether the particular statute falls within or outside of its appropriate limits."

So it is for this Court to determine as an independent question whether this particular ordinance belongs or does not belong within the police power and whether or not it interferes with the vested rights which we have acquired.

Mr. Justice Brannon, in his work on the Fourteenth Amendment, the most recent work in reference to this important article of the Federal Constitution, p. 172, says:

"In *Lawton v. Steele*, 152 U. S. 133, is an opinion by Mr. Justice Brown which I consider one of the very best statements of the nature and extent of the police power to be found anywhere. Mr. Justice Brown says: "It is universally conceded to include everything essential to public safety, health and morals, and to justify destruction or

abatement by summary proceedings of whatever may be regarded as public nuisances. * * * * * * 'To justify the State in thus interposing its authority in behalf of the public it must appear, *first*, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, *second*, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under guise of protecting public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination of what is a proper exercise of the police power is not final or conclusive, but is subject to the supervision of the courts.'"

This ordinance is not within the provisions of the police power as we understand it. We understand the police power, as defined, to have reference to *those things which affect the public health, the public safety, the public comfort or the public morals.* If they do not affect those things they are arbitrary exercises of the legislative power and if they affect vested rights the courts will not sustain them.

In the case of *Noel v. People*, 187 Ill. 587, the Supreme Court of Illinois said: "Undoubtedly the legislature has the right, under the police power, to pass enactments for the benefit and promotion of the public health. But it is well settled that the exercise of the police power must be limited to such measures as are designed to promote the public health, the public morals, the public safety, or the public welfare. *City of Chicago v. Netcher*, 183 Ill. 104. When it can be seen from the provisions of a statute that it has no tendency to promote the public health, safety, morals, comfort, or welfare, the courts are authorized to declare it invalid."

In that case the Supreme Court of Illinois quoted with approval from the case of *State v. Donaldson*, 41 Minn. 74, where the Supreme Court of Minnesota said:

"In the absence of some other regulations, a statute merely limiting the sale of patent medicines to a particular class

would not and could not have any natural or reasonable tendency to protect the public. Such a law would not go far enough to amount to a police regulation. It would be merely giving a certain class of men a monopoly of the trade. This is not within the police power of this State. * * * A law enacted in the exercise of the police power must in fact be a police law. If it be a law for the protection of public health, it must be a health law having some relation to public health.* * * If it is apparent on the face of the act that its provisions, from the very nature, cannot and will not conduce to any legitimate police purpose, it is the right as well as the duty of the court to pronounce it invalid, as in excess of legislative power, and an arbitrary and unwarranted inteference with the right of the citizen to pursue any lawful occupation."

In *Chicago v. Netcher, supra*, the Supreme Court of Illinois further said: "In order to sustain legislative interference with the business of the citizen by virtue of the police power, it is necessary that the act should have some reasonable relation to the subjects included in such power. If it is claimed that the statute or ordinance is referable to the police power, the court must be able to see that it tends, in some degree, towards the prevention of offenses, or the preservation of the public health, morals, safety, or welfare. It must be apparent that some such end is the one actually intended, and that there is some connection between the provisions of the law and such purpose. If it is manifest that the statute or ordinance has no such object, but, under the guise of a police regulation, is an invasion of the property rights of the individual, it is the duty of the court to declare it void. *Braceville Coal Co. v. People, supra; Eden v. People*, 161 Ill. 296, 43 N. E. 1108; Cooley, Const. Lim. 577. It is not claimed in the argument for the city that the selling of the different kinds of merchandise mentioned in the ordinance in the same building tends in any way to affect the safety, health, morals, comfort, or welfare of the public. No attempt is made to suggest any grounds upon which the ordinance can be justified as an exercise of the police power of the city or the state. It certainly cannot be contended

that there is anything in the character of dry goods, clothing, jewelry, and drugs which renders it dangerous to the public, or inimical to the general welfare, that they should be sold in the same building with provisions. General stores have always dealt in all kinds of merchandise, and no one has ever imagined that the comfort, safety, or welfare of the public was in any manner or to any extent injured or prejudiced by them. Public health and public comfort are in no way affected by selling the different kinds of merchandise enumerated in different departments of the same building, and would not be if the same clerk should sell them, nor would the public welfare or comfort be increased by compelling a customer to buy one kind of merchandise in one store and another in some other store. In *Meyers v. Baker*, 120 Ill., 567, 12 N. E. 79, the act prohibiting the establishment of a tent, booth, or place of vending provisions or refreshments within a certain distance of a camp meeting was sustained as a police regulation tending to prevent disturbance or disorderly conduct. But this ordinance has no such purpose. It is plain that its object is not to protect the health, morals, or safety of the public, or to accomplish any object falling within the police power. It is a mere attempt to deny a property right to a particular class in the community, where all other members of the community are left to enjoy it. It is immaterial whether such a denial is in a statute or in an ordinance passed by virtue of a statute. It is equally invalid in either case."

The police power of the State of California is a sovereign power. It does not exist by virtue of the grant of the constitution of that State. The provisions of the constitution of that State in reference thereto are not a grant of the police power. The police power, like the power of eminent domain and the power of taxation is a sovereign power within the people of the State prior to the adoption of the constitution. Sec. 11 of Art. XI of the constitution of the State of California is not, therefore, a grant of police power but it is an extension to the counties, cities, towns or townships of

the State of the right to exercise the powers that are inherent in the legislature as the representative of the people. That is the scope of Section 11 of Article XI of the constitution of that State. It is therein provided "that any county, city, town or township may make or enforce within its limits all such local police, sanitary or other regulations as are not in conflict with general laws." The provisions of that constitution are simply a grant to the municipal authorities to exercise a power which is inherent in the State. It does not enlarge upon that power or give the municipality any power which the legislature itself did not have; namely a right to exercise the police power by virtue of its sovereignty; and the police power is not enlarged by virtue of the terms of the provisions of that constitution. It is as it always was, the right of the people to legislate in reference to those things which promote the public health, the public comfort, the public safety or the public morals.

It was not intended by either the constitution of that State, or any statute passed prior to its adoption, to vest in the City of Los Angeles police powers in excess of those which states or municipalities exercised prior to the adoption of the constitution of the State of California, and it cannot be successfully asserted that the City of Los Angeles has to-day any police power which is superior to and more far-reaching than that which the common law recognizes as inherent in states and as possessed by municipalities to whom that police power upon certain subjects had been delegated.

*Ex parte Campbell*, 74 Cal. 20;
*Ex parte Roach*, 104 Cal. 272.

The following authorities clearly define the police power and are applicable to the case at bar, and distinguish the case at bar from the authorities relied upon by the defendant in error in the court below.

The case of the *City of Indianapolis v. Consumers' Gas Trust Company*, 140 Ind. 107, was prosecuted by the City of Indianapolis against the Consumers' Gas Trust Company for the violation of a city ordinance. By the general ordinance passed by the City of Indianapolis on the 27th day of June, 1887, it was provided that any corporation could maintain, lay or extend and maintain mains, pipes, etc., through the streets, etc., of said city, and may take up for the purpose of altering, changing or repairing the same, as the necessities of the case may require, for the purpose of supplying such city and its inhabitants with natural gas under certain restrictions and conditions prescribed in the ordinance. Afterwards, in 1890, the City Council of the City of Indianapolis passed an ordinance making it unlawful for any person, firm or corporation to cut or dig into any street or alley that may theretofore have been paved with brick, or any form of block, macadam or asphaltic pavement, until such person, firm or corporation, for whose benefit such proposed opening was to be made, should have first secured the consent of the common council and board of aldermen so to do, and should have filed in the office of the city a bond conditioned to protect the city from all liability on account of the proposed opening of said street. For the alleged violation of this city ordinance the prosecutions were commenced against the defendant and it was contended that the defendant having complied in all respects with the provisions of the ordinance of June, 1887, that the ordinance of 1890 was invalid in that it impaired the obligation of the legislative contract between appellant and appellee by virtue of the ordinance of 1887. It was contended by the city, that nothwithstanding the passage of the first ordinance and the acceptance thereof by the Gas Company constituted a contract, yet it was subject to the exercise of the police power upon the part of the city, which power could

not be bargained away, and that the ordinance of 1890 was a valid exercise of that power. In reference to this ordinance and this question, the Supreme Court of Indiana, said:

"There was no compulsion on the part of the appellant to grant the privilege to use its streets to any particular company. It was within its discretion to give or not to give its consent, and it had the right to withhold it from all gas companies. *Gas & Min. Co. v. Town of Elwood*, 114 Ind. 332, 16 N. E. 624. It was not limited alone to the granting of the franchise, but it had the right to prescribe and impose terms and conditions. Dill Mun. Corp. Sec. 706; 2 Wood, Ry. Law, p. 986. Elliott Roads, & S., p. 465. When these terms and conditions proposed by appellant were accepted by the appellee, and complied with, it became a binding contract. *Western P. & S. Co. v. Citizens' St. R. Co.*, 128 Ind. 531, 26 N. E. 188, and 28 N. E. 88. But the appellant contends that such grants are but the exercise of police power, and may be changed or repealed by the granting power. It is true, that, in grants to persons or corporations to supply gas and the like to the inhabitants of towns or cities, the municipality does not part with or bargain away its right, under the police power, to protect the public health, the public morals, and public safety, as the one or the other may be affected by the exercise of the franchise by the grantee. *New Orleans Gaslight Co. v. Louisiana etc., Manuf'g. Co.*, 115 U. S. 650, Beach Pub. Corp., Secs. 713, 990, 1229, 1230. In the case of the *City of Indianapolis v. Indianapolis Gaslight & Coke Co., supra*, it was contended, upon the part of the city, that the contract in controversy was a restriction upon the legislative power to regulate the lighting of the streets. But this court, in that case, draw the distinction between the legislative and contractual powers of municipal bodies as follows: 'These two powers need not be confounded. The exercise of the legislative power requires the consent of no person, except those who legislate, while it is impossible to make a contract without the consent of another or others. We think, therefore, that, when the City of Indianapolis made the contract in question with

the gas light company, it made it in the exercise of its power to contract, and not in the exercise of its powers to legislate, although the power to make the contract was authorized by an ordinance; and, having the power to make a contract touching the subject-matter, it had the right to make it according to its own discretion as to its prudence or good policy, within the limits of its franchise. Nor can we see that the contract in the least restricts the legislative powers of the city, except that, as the sanctity of the contract is shielded by the Constitution of the United States, it cannot, in the exercise of its legislative power, impair its validity; for it would be a solecism to hold that a municipal corporation can impair the validity of a contract, when the state which created the corporation, by its most solemn acts, has no such power." See, also *Inverness Co. v. Dillett*, 16 How. 416. The appellant cites *Stone v. Mississippi*, 101 U. S. 814, in support of its contention that the grant to appellee to use the streets was the exercise of its police power; but this case decides *only* that the abolition of a lottery was clearly within this power, as lotteries are contrary to public morals. The case has no bearing upon the rules which the appellant insists ought to be applied in the case now before us. Chief Justice Waite, in this case, speaking for the court, on page 816 of the opinion, said: "Many attempts have been made in this court and elsewhere to define the police power, but never with success. It is always easy to determine whether a particular case comes within the general scope of the power, than to give an abstract definition of the power itself, which will be in all respects accurate. No one, however, denies that it extends to all matters affecting the public health or the public morals." This, we think enunciates the true rule. We cannot agree, and hold with the appellant that the second ordinance upon which this prosecution is based should be regarded as an exercise of the police power under discussion, so as to bind the appellee, under the facts alleged in his answer, and thereby compel it to comply with its terms and conditions in the exercise of the rights granted to it by the first ordinance."

The case of *Bartlett v. City of New Orleans*, 58 Fed.

Rep. 366, is also directly in point, and in this case the City of New Orleans attempted to do what the City of Los Angeles is now attempting to do, in having once established a district, they attempted to restrict it. It appeared in this case that by several ordinances adopted, the City of New Orleans designated the place at which the slaughtering of cattle might be carried on, and prescribed in detail the regulations under which said business could be conducted. The complainant, a citizen of France, whose trade and business was the slaughtering of cattle for food, [illegible]ing and intending to engage in such business in New Orleans, with the privilege of buying real estate within the limits prescribed by the city ordinance, and proceeded to repair such buildings and construct on said ground other buildings and improvements suitable for the trade in which he is engaged, investing in said improvements a considerable sum of money. Subsequently, to this date, an ordinance was passed by the Council which is styled "An ordinance amending ordinance 7,339, as passed September 11, 1890, designating the places for slaughtering animals required for food under article 240 of the constitution." The original ordinance provided that "It shall be lawful for any person or corporation to keep and maintain slaughter houses, etc., within certain limits, under certain regulations." The amendment mentioned made it unlawful to keep and maintain slaughter houses within said limits prescribed in the original ordinance and under said regulations "except permission be granted by the Council of the City of New Orleans." The court said:

"It appears that defendant corporation intends actively to enforce, or attempt to enforce, or cause further the amended ordinance; that it is about to destroy, injure and prevent him from carrying on his legal business in the limits already laid out in pursuance of article 240.

"The complainant, alleging that, acting on the good faith of said articles and ordinances, he has acquired vested rights, and that the ordinance of May 19th is unconstitutional, brings a bill for injunction to enjoin and restrain the defendant from interfering in any manner with him in carrying on his business. * * * * *

"If the amendment of May 19th becomes operative as a law, the investment made by Barthet, on the faith of the law existing when he erected his buildings, will be lost or greatly diminished in value and his privilege, which is of more value, may be wholly destroyed by refusal of the city. It is urged in argument that the corporation is a legislative body, endowed with police powers, to be exercised with absolute discretion; that this court has no power to control or limit its action in directing when, and upon what particular lot in the territory laid out and defined by the city, Barthet, or any other person following the same business, may locate and carry on his business of slaughtering animals for food. The proposition of the city attorney, in view of the many cases that have been decided by the State and Federal courts, in which just such assumption of power have been contended for and denied to municipal authorities, need not now be considered, further than to say that the court does not think the proposition maintainable under the law and facts found on the hearing of this bill."

"Our opinion will be better understood when we say that the city authorities have no power, legislative, judicial, or administrative, to pass the ordinance complained of; because the power, by whatever name it may be called, delegated to the city in articles 248, 258, as far as Barthet is now concerned, was exhausted when the city officials laid out the limits in which it was declared lawful to slaughter animals for food."

The case of the *City of Buffalo v. Chadeayne*, 124 N. Y. 163, is a case where the City of Buffalo, having prescribed certain fire limits and having given permit to a citizen of Buffalo to erect seven frame buildings within that district, subsequently after he had his foundations laid, changed the

district and prosecuted him for a violation of the ordinance by which they attempted to restrict the district. In that respect it is similar to the case at bar. The court said:

"This action was brought to recover a penalty for an alleged violation of an ordinance pertaining to the erection of wooden buildings within the prescribed fire limits of the City of Buffalo. On the 11th day of July, 1887, the Common Council of the city passed a resolution granting permission to the defendant to erect seven frame wooden houses upon premises owned by him, and specifically described. The resolution was duly approved by the mayor, and thereupon, the defendant entered into a contract for the materials with which to make such structures. He made excavations for the cellars, and laid a portion of the walls prior to the 1st day of August. On that day the Common Council, without notice to him, passed a resolution which it is claimed rescinds the former resolution. The last resolution was approved by the mayor on the 15th day of August, and on the 10th day of November a copy thereof was served upon the defendant. Oral notice was given to him of the passage of the resolution on the 2nd day of August, prior to its approval by the mayor. He, however, continued the construction of his buildings, and at the time the notice, with a copy of the resolution, was served upon him in November, several of the buildings had their roofs on, and the rest were in the process of construction. This action was then brought for the penalty provided for in the ordinance, and resulted in the judgment which is the subject of this review. The charter of the plaintiff (chapter 519, Laws 1870) provides that 'the city shall have power by its Common Council from time to time to enact ordinances, * * * to prescribe the limits within which wooden buildings shall be erected, and the manner in and material of which all buildings shall be constructed within such limits. Every building erected or placed contrary to any ordinance passed under the last above provision shall be deemed a common nuisance, and may be abated as such.' Title 3, Sec. 8, Subd. 4. Pursuant to this provision, the Common Council enacted ordinances, among which we find the following: 'No per-

son shall, without permission of the Common Council, erect, place, or move any building, constructed in whole or in part of wood, within the limits of the City of Buffalo, as defined by Section 2 of Title 1 of the charter said city.' Ord. c. 5, Sec. 20. The defendant's buildings are within the fire limits, as prescribed by the ordinance. He therefore had no right to construct them without permission of the Common Council. Such permission, as we have seen, was granted on the 11th day of July, 1887, and thereby he acquired the right to proceed with the construction of his buildings, and to possess and enjoy the comforts they might afford. As soon as he had entered upon the construction of the buildings, and incurred liabilities for the work and material, he had a property interest in them. In this right he was entitled to protection. *People v. O'Brien*, 111 N. Y. 1-62, 18 N. E. Rep. 692; *In re Union El. R. of Brooklyn*, 112 N. Y. 61-75, 19 N. E. Rep. 664; *People v. Otis*, 90 N. Y. 48-52; *Stuart v. Palmer*, 74 N. Y. 183; *Detroit v. Plank-Road Co.*, 43 Mich. 140, 5 N. W. Rep. 275.

"It is claimed by the appellant that a municipal board may reconsider its action at any time before private vested rights have resulted from such action, and that the defendant could not acquire vested rights as against the police power of the state or municipality. For the purposes of this case we may concede these propositions. As to the first, it appears, as we have seen, that the defendant had entered upon the construction of his buildings, had made contracts, and incurred liabilities thereon, before the Common Council attempted to reconsider its action, giving him a permit to construct of wood. A private property right had, therefore vested in him prior to the rescission of the resolution. As to the second, his right may be subject to the police power of the State, but the difficulty is that the State has not seen fit to deprive him of such right by the exercise of such power, nor has it delegated the same to the municipality. The State has given the municipality power to prescribe the limits in which wooden buildings shall not be erected. This pertains to the future, and not to existing wooden buildings. The ordinance to which we have referred provides that no person shall, without permission of the Common Council,

erect any building in whole or in part of wood, within certain limits. This has reference to buildings that shall be erected in the future, and not existing buildings, or to those erected with the permission of the Common Council. So that neither the charter nor the ordinance authorizes it to interfere with existing buildings, or those constructed with its permission. There is consequently no power given to the Common Council to deprive the defendant of any vested property rights in the buildings. If the Common Council could interfere and rescind its permit after a building is partially constructed, it could also rescind after it was fully completed. It would consequently follow that every person who in the past has constructed wooden buildings with the permission of the Common Council is now liable to have his permit revoked, and his buildings declared a nuisance, and abated as such. The restrictions authorized by the provisions of the charter under consideration are for the purpose of the prevention and extinguishment of fires. They have no reference to buildings that may become a nuisance by reason of their becoming dangerous to the public. Having in view the purpose for which the provision was enacted, it seems to us clear that it was not intended to give to the Common Council the power to deprive persons of their buildings which had previously been erected, or of those which should be thereafter erected, in whole or in part, with the permission of the Common Council; and that its power is limited to the prevention of the erection of wooden buildings in the future without its permit."

This is the latest case in the Court of Appeals of New York having reference to this subject.

*It is of vital importance in arriving at a conclusion in this case to bear in mind that the police power has only to do with those things that affect the public health, the public morals, the public comfort or the public safety.* This is demonstrated and insisted upon by this Court as the real criterion of all these questions as to the exercise of the police powers.

The cases relied upon by the counsel for the defendant

in the court below, as for instance the case of *Beer Company v. Massachusetts*, 97 U. S. 25, a beer case; *Fertilizing Company v. Hyde Park*, 97 U. S. 659, a fertilizing case; and *Stone v. Mississippi*, 101 U. S. 814, a lottery case, are all well recognized as being within the police power. This case of the *Hyde Park Fertilizing Company*, as we have before said, is one of the strongest cases reported, where permission was given by a charter granted by the legislature of the State of Illinois, to the fertilizing company to erect fertilizing works within the town of Hyde Park. Subsequently, the growth of the city of Chicago was such that these works became a nuisance and the city authorities of the town of Hyde Park passed an ordinance absolutely prohibiting carrying on the manufacturing of fertilizers and rendering business within the town of Hyde Park, although this work had been caried on by this company for ten years by virtue of the charter of the legislature, and they had expended upon their works upwards of $200,000.

This court sustained the ordinance passed by the town authorities of the town of Hyde Park because they said it came directly within the definition of the police power in that it affected the public health and the public comfort.

This case is an illustration of a well recognized principle that the great police power is not bound to recognize a condition or state of things existing to-day as beyond change at its hands in time to come, when changed conditions occur and public welfare demands alteration and increased exercise of police power in restraint of privileges once established. A business once harmless and lawful under an altered condition of things may later on become hurtful to the public, and in that event may be restrained in its transaction. That is not the case at bar.

Take, however, the case of *New Orleans Gas Company*

*v. Louisiana Light Company*, 115 U. S. 650, and we come to a different line of authorities and we find there the distinction well pointed out by Mr. Justice Harlan, who rendered the opinion of this Court, and which is the distinction this Court will bear in mind in determining this question and should always be borne in mind in the determination of the question whether or not an ordinance is a police regulation.

Is the object sought to be attained the abatement and destruction of that which affects the public health, the public safety or the public morals? If it does not, it is not within the police power of the State; and if it affects vested rights, it is the taking of private property without due process of law. If it interferes with the lawful occupation of a citizen, it interferes with his rights, privileges and immunities.

Mr. Justice Harlan makes this distinction in the case of *New Orleans Gas Company v. Louisiana Light Company, supra*, and notwithstanding the decisions that are known as the Kansas liquor cases, decided at a later date by this Court (*Mugler v. Kansas*, 123 U. S. 623), this Court has adhered to the doctrine laid down in *New Orleans Gas Company v. Louisiana Light Company*, and in the case of *Walla Walla v. Walla Walla Water Company*, 172 U. S. 15, has reiterated the same doctrine.

Mr. Justice Harlan in the case of *New Orleans Gas Company v. Louisiana Light Company*, in delivering the opinion of the court, used this language: "The principle upon which the decisions of *Beer Company v. Massachusetts*, (97 U. S. 25), *Fertilizing Company v. Hyde Park* (97 U. S. 659), *Stone v. Mississippi* (101 U. S. 814), and *Butchers' Union Company v. Crescent City Live-Stock Landing Company* (111 U. S. 746), rest, is, that one legislature cannot so limit the discretion of its successors, that they may not enact such laws as are necesary to protect the public health, or the public morals. That principle, it may be observed, was an-

nounced with reference to particular kinds of private business which, in whatever manner conducted, were detrimental to the public health or the public morals. It is fairly the result of those cases, that statutory authority given by the State to corporations or individuals to engage in a particular private business attended by such results, while it protects them for the time against public prosecution, does not constitute a contract preventing the withdrawal of such authority, or the granting of it to others.

"The present case involves no such consideration. We have seen the manufacture of gas, and its distribution for public and private use by means of pipes laid, under legislative authority, in the streets and ways of a city, is not an ordinary business in which everyone may engage, but is a franchise belonging to the government, to be granted, for the accomplishment of public objects to whomsoever and upon what terms, it pleases. It is a business of a public nature, and meets a public necessity for which the State may make provision. It is one which, so far from affecting the public injuriously, has become one of the most important agencies of civilization, for the promotion of public convenience and the public safety."

We strenuously contend that in the erection of these gas works that there is nothing unlawful and that when we come to maintain these works, if we maintain a nuisance the city authorities have a right under changed conditions to regulate it and make us cease maintaining a nuisance, or if we charge for gas more than we ought to, they have a right to regulate that; but they have no right to absolutely drive us out of business and say we shall not erect a building in which we are going to manufacture this gas. The erection of gas works does not constitute a public offense in any respect whatever; nor does their maintenance, unless it is judicially determined it is a nuisance.

Continuing from the *New Orleans Gas Company's* case, this court says:

"Whatever therefore in the manufacture or distribution of gas in the city of New Orelans proves to be injurious to the public health, the public comfort, or the public safety, may, notwithstanding the exclusive grant to plaintiff, be prohibited by legislation, or by municipal ordinance passed under legislative authority. It cannot be said with propriety, that to sustain that grant is to obstruct the State in the exercise of her power to provide for the public protection, health and safety. The article in the State Constitution of 1879 in relation to monopolies is not in any legal sense an exercise of the police power for the preservation of the public health, or the promotion of the public safety; for the exclusiveness of a grant has no relation whatever to the public health or to the public safety. These considerations depend upon the nature of the business or duty to which the grant relates, and not at all upon the inquiry whether a franchise is exercised by one rather than by many."

And so we insist that the facts that distinguish these cases whether or not they are within the police power is this: Do they affect the public health, the public safety, the public comfort or the public morals? If they do not, they are not within the proper exercise of the police power and the police regulation.

In the case of *Walla Walla City v. Walla Walla Water Company*, 172 U. S. 15, this Court said:

"The argument that the contract is void as an attempt to barter away the legislative power of the City Council rests upon the assumption that contracts for supplying a city with water are within the police power of the city, and may be controlled, managed or abrogated at the pleasure of the council. This court has doubtless held that the police power is one which remains constantly under the control of the legislative authority, and that a City Council can neither bind itself nor its successors, to contracts prejudicial to the peace, good order, health or morals of its inhabitants; but it is to cases of this class that these rulings have been confined. If a contract be objectionable in itself upon these

grounds, or if it becomes so in its execution, the municipality may, in the exercise of its police power, regulate the manner in which it may be carried out, or, may abrogate it entirely, upon the principles that it cannot bind itself to any course of action which shall prove deleterious to the health or morals of its inhabitants. In such case an appeal to the contract clause of the constitution is ineffectual. Thus in *Fertilizing Company v. Hyde Park*, 97 U. S. 659, an act of the General Assembly of Illinois authorized the Fertilizing Company to establish and maintain for fifty years certain chemical works for the purpose of converting dead animals into agricultural fertilizers, and to maintain depots in Chicago for the purpose of receiving and carrying out of the city dead animals and other animal matter which it might own or buy. Subsequently, the charter of the village of Hyde Park was revised, and power given it to define or abate nuisances injurious to the public health. It was held that under this power the village had the right to prohibit the carrying of dead animals, or offensive matter, through the streets; that the charter of the company was a sufficient license until revoked, but was not a contract guaranteeing that the company might continue to carry on a business which had become a nuisance by the growth of population around its works, or that it should be exempt for fifty years from an exercise of the police power of the State, citing *Coates v. Mayor, &c. of New York*, 7 Cowen, 585.

"Substantially, the same ruling was made in *Butchers' Union Company v. Crescent City &c Company*, 111 U. S. 746, wherein an act of the legislature of Louisiana, granting exclusive privileges for maintaining slaughter houses, was held to be subject to subsequent ordinances of the city of New Orleans opening to general competition the right to build slaughter houses.

"The same principle has been applied to charters for the maintenance of lotteries which, upon grounds of public policy, have been held to be mere licenses and subject to abrogation in the exercise of the police power of the government; *Boyd v. Alabama*, 94 U. S. 645; *Stone v. Mississippi*, 101 U S. 814; *Douglas v. Kentucky*, 168 U. S. 488; as well as to laws regulating the liquor traffic, *Beer Company v.*

*Massachusetts*, 97 U. S. 25; *Metropolitan Board of Excise v. Barrie*, 34 N. Y. 657; and even laws regulating the inspection of coal oil; *United States v. De Witt*, 9 Wall. 41; *Patterson v. Kentucky*, 97 U. S. 501. In the latter case it was held that a person holding a patent under the laws of the United States for an invention was not protected by such patent in selling oil condemned by a state inspector as unsafe for illuminating purposes.

"Under this power and the analogous power of taxation we should have no doubt that the City Council might take such measures as were necessary or prudent to secure the purity of the water furnished under the contract of the company, and the payment of its just contributions to the public burdens, and the observance of its own ordinances respecting the manner in which the pipes and mains of the company should be laid through the streets of the city. *New York v. Squire*, 145 U. S. 175; *St. Louis v. Western Union Tel. Co.*, 148 U. S. 92; *Laclede Gas Light Co. v. Murphy*, 170 U. S. 78. But where a contract for a supply of water is innocuous in itself and is carried out with due regard to the good order of the city and the health of its inhabitants, the aid of the police power cannot be invoked to abrogate or impair it."

In the manufacture of gas there is nothing that will affect the public health or the public safety. It is alleged in the complaint in this case that the gas works in question are being erected upon concrete foundations with a superstructure of brick, steel and iron, of the best material procurable, and are not combustible and that the same are so firmly and substantially constructed that there can be no danger from explosions, bursting or leakage; that all the machinery now in place therein or to be placed therein is of the most approved pattern, and constructed in accordance with the latest devices and improvements known in the manufacture of gas; that said works can and will be operated and maintained by the said Caroline W. Dobbins, by the use of the said devices and improvements and the said machinery

therein contained, so that there will be no leakage or escape of odors, and that the same will not create a nuisance and will not interfere in any way with the health, comfort, safety or welfare of the inhabitants of the said district and territory in which the said gas works are located upon the premises of the said Caroline W. Dobbins, or of any other of the inhabitants of said City of Los Angeles.

The demurrer of the defendant in error admits the facts thus pleaded in the complaint as true. Until we have had an opportunity of testing this question, the city authorities have no right to interfere and exercise this so-called police power.

It will be for the counsel for defendant in error to show any case in which the police power has been sustained and allowed to infringe upon vested rights, except in those cases which affected the public health, comfort, safety or welfare, and it will be for them to show that in the nature of the case that under a police power a municipal authority has been allowed to restrain the prosecution of any business or enterprise that does not so infringe upon the public health, public comfort, public welfare or public safety.

It wil not be sufficient for them to cite the case of *ex parte Lacey*, 108 Cal. 326, where an ordinance for the establishment of a steam carpet beating machine was sustained, as that was a health ordinance, and the City of Los Angeles cannot pass, under the guise of a health measure, an ordinance that has no relation whatever to the public health; the *Slaughterhouse Cases*, 16 Wallace 36, which were health regulations; the case of *Barbier v. Connolly*, 113 U. S. 27, in reference to the conduct of a public laundry between the hours of ten o'clock at night and six o'clock in the morning, which had reference to a fire regulation; or the case of *Knoxville v. Bird*, 12 Lea, 121, which had reference to fire limits ordinance and affected the public safety; or the case

of *Davenport v. City of Richmond*, 81 Virginia 636, where the ordinance in question was in reference to the keeping and selling of gun powder and affected the public safety; or lottery cases, which affect the public morals. It will be for the learned counsel for the respondent to show any case in which the police power has been allowed to infringe upon vested rights by determining that any enterprise was a nuisance unless the same was a nuisance *per se*.

The plaintiff in error, Caroline W. Dobbins, had vested rights; she had civil rights pledged by legislative authority, by permission of the City Council of the City of Los Angeles by authority of the Board of Fire Commissioners, to whom it was delegated. Under this legislative authority the said plaintiff in error has expended large sums of money in the attempt to erect these gas works. The city should be estopped by its own grants. Having once established a district and having invited the said plaintiff in error by virtue thereof to acquire certain property rights therein, the city has exhausted its powers and has no power to change the district in violation of those rights, unless it comes within some legitimate police regulation under a changed condition of affairs; and we urge and insist that the ordinance of March 3rd, 1902, does not come within what is known as the police power, but is in violation of vested rights.

**THIRD: A COURT OF EQUITY HAS POWER TO RESTRAIN BY INJUNCTION A MUNICIPALITY FROM INSTITUTING CRIMINAL PROCEEDINGS WHEN SUCH PROSECUTIONS ARE THREATENED UNDER COLOR OF AN INVALID ORDINANCE FOR THE PURPOSE OF COMPELLING THE RELINQUISHMENT OF A PROPERTY RIGHT.**

This question relates to the equity jurisdiction of the court.

We have demonstrated that the prosecutions instituted by the defendant in error, the City of Los Angeles, were under invalid ordinances and that the plaintiff in error, Caroline W. Dobbins, had a vested property right, acquired by legislative authority, on which she had expended large sums of money, which the defendant in error was endeavoring to coerce her into relinquishment of by prosecutions under these invalid ordinances.

It is alleged in the complaint that the defendant in error conducted these prosecutions under the guise of enforcing the invalid ordinances to which we have called this Court's attention, and that it threatened that if the said plaintiff in error continued to carry on her work in which she was engaged in building the said gas works and manufactory for the manufacture of gas, that it would arrest all persons employed and engaged in said work until it should have stopped the construction of said gas works and compelled the said plaintiff in error to desist from the erection thereof.

Under these circumstances, the remedy in equity was available and was the only complete remedy of the plaintiff in error.

While, as a general rule, equity will not interfere by injunction to restrain the prosecution of suits for violation of municipal ordinances, there are certain distinctions to be observed in applying this rule.

These distinctions and exceptions to the general rule are best illustrated by the case referred to at the opening of our brief, which was before this court at the October term, 1903, *Davis & Farnum Manufacturing Company v. City of Los Angeles*, 189 U. S. 207.

This was a bill in equity filed in the Circuit Court for the Southern District of California by appellant therein, a citizen of Massachusetts, to restrain the City of Los Angeles and its officers from enforcing certain municipal ordi-

nances, prohibiting the erection or maintenance of gas tanks or reservoirs within certain portions of the city.

The gravamen of the bill was that on September 1, 1901, Caroline W. Dobbins made a contract with the Valley Gas and Fuel Company, a California corporation, to build certain gas works for her, including all things necessary for the manufacture, recovery and storage of gas, on lands thereafter to be designated; that on September 17 the appellant made a contract with the Gas and Fuel Company to erect upon Mrs. Dobbins' premises a water tank and gas holder, having a capacity of 100,000 cubic feet of gas, and that immediately thereafter it constructed and prepared the material and machinery necessary for the erection of the tank and gas holder, and shipped the same to Los Angeles; that on September 28, Mrs. Dobbins purchased certain lands in Los Angeles, which were within the limits wherein it was lawful to erect gas works as described in a municipal ordinance adopted August 26, 1901, and on November 1 applied to the board of Fire Commissioners for a permit to erect such gas works; that on November 22, her petition came on for hearing before the Fire Commissioners, and after proof had been made that all provisions of prior ordinances had been complied with, the matter was duly considered, and finally resulted, November 22, in a vote to grant a permit to erect and maintain the gas works.

That upon the 22d day of November, Mrs. Dobbins' contractors began at once to lay the foundation for said works at a cost of upwards of $2,500, when on November 25, the city adopted an ordinance, amending that of August 26, 1901, including her property in the prohibited territory for the erection or maintenance of gas works, which ordinance, however, seems to have proved defective, and subsequently in February, 1902, caused certain of the employes of the Gas and Fuel Company to be arrested, charging them with

a violation of the ordinance. Subsequently under new proceedings certain employes of the plaintiff were arrested and the work stopped.

Another ordinance was passed on March 3, 1902, also amending that of August 26, 1901, and other arrests were made of the employes for a violation of this ordinance. It was averred that the gas works are in an uncompleted condition, exposed to the elements and in danger of being destroyed, and that all of the aforesaid ordinances were adopted by the Common Council at the instigation of the Los Angeles Lighting Company, which had enjoyed a monopoly of the gas business for the last ten years.

A demurrer was filed to this bill by the city for want of equity and of jurisdiction, which was sustained by the court, and the bill dismissed. (115 Fed. Rep. 537), apparently upon the ground that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there. Whereupon an appeal was taken to this Court:

Mr. Justice Brown delivered the opinion of this Court:

"The court below did not pass upon the validity of these ordinances, but came to the conclusion that a bill in equity would not lie to restrain their enforcement, and in this aspect we shall discuss the case. As the only method employed for the enforcement of these ordinances was criminal proceedings it follows that the prayer of the bill to enjoin the city from enforcing these ordinances or prevent plaintiff from carrying out its work, must be construed as demanding the discontinuance of such criminal proceedings as were already pending, and inhibiting the institution of others of a similar character.

That a court of equity has no general power to enjoin or stay criminal proceedings unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there, or to prohibit the invasion

of the rights of property by the enforcement of an unconstitutional law, was so fully considered and settled in an elaborate opinion by Mr. Justice Gray, (*In re Sawyer*, 124 U. S. 200), that no further reference to prior authorities is deemed necessary, and we have little more to do than to consider whether there is anything exceptional in the case under consideration to take it out of the general rule. The plaintiff in the case of Sawyer sought to restrain the mayor and committee of a city in Nebraska from removing a city officer under charges filed against him for malfeasance in office. This was held to fall within the general rule and not within the exception.

The general rule that a Circuit Court of the United States, sitting as a court of equity, cannot stay by injunction proceedings pending in a State court to enforce the criminal laws of such State, was applied in *Harkrader v. Wadley*, (172 U. S. 148,) to a case where the plaintiff sought to enjoin proceedings against him for the embezzlement of the assets of a bank; and in *Fitts v. McGee*, (172 U. S. 516,) to a suit brought by the receiver of a railroad against the attorney general of the State to restrain him from instituting or prosecuting criminal proceedings to enforce against the plaintiff the provisions of a State law reducing the tolls, which had been exacted of the public by the railroad, of which the plaintiff was receiver. This was held to be in reality a suit against the State to enjoin the institution of criminal proceedings, and hence within the general rule.

Plaintiff seeks to maintain its bill under the exception above noted, wherein, in a few cases, an injunction had been allowed to issue to restrain an invasion of rights of property by the enforcement of an unconstitutional law, where such enforcement would result in irreparable damages to the plaintiff. It cites in that regard the case of *Regan v. Farmers' Loan & Trust Co.*, (154 U. S. 362,) in which, under a law of Texas giving express authority to a railroad company or other party in interest to bring suit against the railroad commissioners of that State, a bill was sustained against such commission to restrain the enforcement of unreasonable and unjust rates and in the opinion a few

instances were cited where bills were sustained against officers of the State, who, under color of an unconstitutional statute, were committing acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. It would seem that if there were jurisdiction in a court of equity to enjoin the invasion of property rights through the instrumentality of an unconstitutional law, that jurisdiction would not be ousted by the fact that the State had chosen to assert its power to enforce such law by indictment or other criminal proceeding. (*Springfield Spinning Co. v. Riley*, L. R. 6 Eq. 558.)"

Besides the authorities cited by this court in support of the foregoing propositions, we refer to other cases cited by us in the brief *supra*.

The fact that municipal and city regulations are usually rendered effective by making their violation punishable offenses does not militate against the jurisdiction of a court of equity to protect all property right against invasion by invalid ordinances.

This Court in the case of *Detroit v. Detroit Citizens Street Railroad Company*, 184 U. S. 368, well decided that the presence or absence of penalties for disobedience of the ordinance did not alter the principle, and confining the question before this Court to the principle, as we have stated it, that courts of equity will enjoin the enforcement of void city ordinances to prevent a multiplicity of actions or to protect property rights injuriously affected or impaired thereby, especially when they are acquired under legislative authority, gives no cause for alarm that courts of equity would be found "exercising supervisory power over the administration of a part, not inconsiderable of the criminal laws of the country."

The case made by the complaint filed herein by Caroline W. Dobbins, plaintiff in error, presents strong questions for equitable interference. The municipal authorities of

the City of Los Angeles, in violation of all the rights of Caroline W. Dobbins, plaintiff in error, passes ordinances that absolutely prohibited the erection of the work in which the said plaintiff in error and her employes were engaged and attempted to intimidate and coerce those engaged in the work to submit to their lawless exactions and stop all work in which the employes of the said plaintiff in error were engaged by arrests and threats of fine and imprisonment. The city authorities have already four times arrested the employes of the said plaintiff in error and solemnly avowed that it was their intention to keep on arresting them daily until they stopped and desisted from all work upon the enterprise in which they were engaged. We have shown that they were engaged at the time of the passage of this ordinance, in a lawful occupation.

The plaintiff in error, Caroline W. Dobbins, has no remedy against the defendant in error for damages, for in the absence of a statutory provision in the State of California imposing the liability, a municipal corporation is not liable for the misfeasance, malfeasance or non-feasance of its officers.

The defendant in error was not liable for the wrongful arrest and imprisonment by its officers of the employes of the plaintiff in error, Caroline W. Dobbins, or forcing the said plaintiff in error to desist and cease from the work of constructing the gas works. *Stedman v. San Francisco*, 63 Cal. 193; *Chope v. Eureka*, 78 Cal. 508; *Doeg v. Cook*, 126 Cal. 213.

The complainant has no speedy and adequate remedy at law and it is a fundamental principle of equity jurisprudence that a remedy at law must be as practical and efficient to the ends of justice, and its prompt administration as the remedy in equity.

The long delays incident to the trial of actions at law

when the men are arrested, before the magistrate, on appeal, on habeas corpus and on writs of error, with work delayed, contracts unfulfilled and heavy damages incurred, and the plaintiff in error ruined, the remedy at law is not such an adequate remedy as may be had in equity where once for all, and without a multiplicity of suits, matters that affect not simply the plaintiff in error, but the interests of the entire community, involved in public utilities such as are described in this complaint, may be determined.

In the case of *Boyce's Executors v. Grundy*, 3 Peters, 377, this Court, referring to the sixteenth section of the judiciary act prohibiting suits in equity where there is a plain adequate remedy at law, said: That section was "merely declaratory on the subject of legal remedy. It is not enough that there is a remedy at law. It must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration, as the remedy in equity."

In the case of *Walla Walla City v. Walla Walla Water Company*, 172 U. S. 1, 12, this Court also said: "This Court has repeatedly declared in affirmance of the generally accepted proposition that the remedy at law, in order to exclude a concurrent remedy at equity, must be as complete, as practical and as efficient to the ends of justice and its prompt administration, as the remedy in equity. *Boyce's Executors v. Grundy*, 3 Pet. 210, 215; *Ins. Co. v. Bailey*, 13 Wall. 616, 621; *Kilbourn v. Sunderland*, 130 U. S. 505, 514; *Tyler v. Savage*, 143 U. S. 79, 95."

If "courts of equity did not interfere in cases of this sort, there would be a great failure of justice in this country." 2 Story, Eq. Jur., Sec. 928.

We may therefore conclude that when property rights are involved a court of equity may enjoin the enforcement of a void city ordinance to prevent a multiplicity of actions, or to protect the property rights injuriously affected or impaired thereby.

**FOURTH. WHERE THE SENTENCE AND JUDGMENT OF A COURT IS BASED UPON AN ORDINANCE WHICH IS UNCONSTITUTIONAL, THE JUDGMENT AND SENTENCE OF SAID COURT IS WITHOUT AUTHORITY AND IS VOID, AND THE DEFENDANT IMPRISONED UNDER IT WILL BE DISCHARGED ON HABEAS CORPUS.**

It is proper for this Court, under a writ of habeas corpus, to inquire into the validity of the law or ordinance under which a prisoner is held in custody, as affecting the jurisdiction of the Court which ordered his imprisonment.

*In re Coy*, 127 U. S. 731-758.

The ordinances, therefore, under which the prisoner, Martin Daly, is held in custody, being invalid, he is entitled to his discharge.

We, however, desire to call this Court's attention in this connection to the case of *Yick Wo vs. Hopkins*, 118 U. S. 356, where this Court considered the same discrimination in the enforcement of the ordinance that is attempted in this case. It is alleged in the petition for a writ herein (Transcript Daly case, fol. 24) that the Southern Pacific Railroad is operating outside of the district in which, by said ordinance of the city of Los Angeles under which this plaintiff in error was arrested, it is lawful to erect or maintain gas works, a large, extensive works for the generation of gas; that at said works of said Southern Pacific Railroad Company are maintained and operated retorts, holders and all necessary appliances for the manufacture of gas on a large and extensive scale; and, also, the gas works of the California Fruit Canners' Association, at the corner of Macy and Anderson streets in the said city of Los Angeles, and without the limits of the alleged district defined

by said ordinance where it is unlawful to operate gas works, at which gas is manufactured and stored by the said cannery company are being operated in plain violation of the terms of the alleged ordinance upon which this prosecution is based, and that said ordinance has not been enforced against said corporations.

There can be no distinction drawn between the principles laid down in the case of *Yick Wo v. Hopkins*, and the admitted facts as disclosed by the petition of Martin Daly in this proceeding. The petition discloses, to quote from this Court in the case last referred to, that this case presents "the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration and those representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the state of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the 14th Amendment of the Constitution of the United States."

## CONCLUSION.

The supreme question in this case, however, is the protection of private rights from an unwarranted and unconstitutional assumption of power by a governing municipal body. While the judiciary is the protecting power of the whole government, it is also charged with the unhampered protection of private rights. When a collision must unhappily exist between the government and private rights, private rights, as well as sovereign powers, are protected by the constitution. To this Court is wisely committed the solution as to whether the exercise of governmental

powers is unwarranted and unconstitutional and infringes upon private rights. Fortunately, it is not left to the mere fiat of a municipal council. However, members of a legislative body may pass laws in the exercise of their general discretion, they are not superior to the judiciary in the determination of the validity of such laws. This should be especially so when individuals have applied to the legislative power to interfere with private rights and private property. Such applications have in some instances met with favor and support. To give security to private rights, these interferences are subject to judicial revision, whether the motives of the legislative body are to be considered or not.

Much has been said about whether the courts will consider the motives which actuate the municipal legislative body in adopting these ordinances. The question need not be considered further. Suffice it to say that this Court will examine all the circumstances that surround the adoption of these ordinances and the object sought to be obtained thereby and will therefrom determine their reasonableness and validity and whether they are not oppressive and operate to the unlawful confiscation of private rights.

It has been demonstrated that these ordinances have no real or substantial relation to either the health, safety, comfort or welfare of the public. It is not sufficient that any business or occupation, if negligently managed or recklessly conducted will injure the public health. This will not justify a municipal legislative body in prohibiting that business or occupation from being properly conducted. If these ordinances are to be justified on the ground of public safety, the same considerations apply. Comfort and welfare are relative terms dependent on conditions and circumstances which must be made apparent—almost self-evident.

The admitted facts in these cases preclude the possibility of any justification being found for the adoption of or-

dinances so far reaching and extreme as those in question in the attempt of the municipal legislative body to interfere with the lawful use of private property.

The questions presented by these records affect not only the plaintiff in error, Mrs. Caroline W. Dobbins, because of the large amounts involved, but they affect the interests of the entire community in which it is proposed, by her, to conduct the business of supplying a public utility. They affect also all other business enterprises of the State of California, for if these rights are no longer inviolable, but may be put in jeopardy at any time by the will of the municipal authorities, then property rights may be taken away, or their use perverted. It would be a most dangerous precedent, and one not to be tolerated by this Court, to hold that all property was subject to the mere will and fiat of the municipal authorities. Large enterprises would not be undertaken, without the security given and protection afforded by the inviolability of contracts and the constitutional guaranty that private property shall not be taken without due process of law.

Respectfully submitted,

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# Supreme Court

OF THE

# United States

**October Term, 1903.**

NO. 401

**Martin Daly,**

*Plaintiff in Error,*

vs.

**Charles Elton,**

*Chief of Police of the City of Los Angeles.*

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## BRIEF AND ARGUMENT ON BEHALF OF DEFENDANT IN ERROR.

This is a case in error to the Supreme Court of the state of California, to review a judgment of that court denying the petition of plaintiff in error to be released from the custody of the defendant Charles Elton, chief of police of the city of Los Angeles, who detained him under a commitment issued by a justice of the police court of that city.

**Statement of the Case.**

The petition of plaintiff in error alleged substantially as follows:

That the petitioner is imprisoned by Charles Elton, chief of police of the city of Los Angeles, and that said imprisonment is illegal. That the pretext of petitioner's arrest and detention is a warrant issued out of the police court of said city upon a complaint charging the petitioner and others with the commission of a misdemeanor in erecting and maintaining, and causing to be erected and maintained, certain gas works and a certain gas tank, reservoir and receptacle, for the storage of gas outside of the limits of a certain district in the city of Los Angeles. [tr. p. 1, fols. 1-3.] That the petitioner was duly arraigned upon the said complaint, and thereupon demurred thereto on the ground that the said complaint did not show the commission of any act or acts which constituted a public offense. That said demurrer was overruled, and thereupon the petitioner pleaded not guilty. That, upon the trial of said petitioner, evidence was offered by the prosecution that the petitioner was, on the 6th day of March, 1902, acting as foreman, and was in charge, of certain men and laborers engaged in erecting and building certain gas works, and a certain tank, reservoir and receptacle for the storage of gas, and did then and there do and

perform work and labor thereon, and that said gas works, tank, reservoir and receptacle were situated and located within the city of Los Angeles and outside of the limits of the district hereinbefore referred to, and that the petitioner did then and there employ and control said laborers and workmen, and that said gas works, tank, reservoir and receptacle were not, nor was any one of them, completed. [tr. p. 2-4, fols. 3-6.]

That on behalf of the defendant evidence to the following effect was offered:

That the petitioner was in charge of the erection of said works, gas holder, water tank, and was acting as foreman for Davis & Farnum Manufacturing Company. That said company was a corporation organized under the laws of the state of Massachusetts, and was erecting said gas holder and water tank for the Valley Gas & Fuel Company, a California corporation, and that said last named company was erecting said works for and under a contract with Caroline W. Dobbins, upon certain lots, all of which were situated within the limits described in ordinance No. 6663 (new series), thereafter in said petition set forth in full. That said lots and premises were purchased by said Caroline W. Dobbins for the purpose of erecting thereon gas works in which gas might be made and manufactured for distribution in the city of Los Angeles, and that there

are no public works owned or controlled by said city for supplying the same with artificial light. That on the 1st day of November, 1901, said Caroline W. Dobbins made an application to the board of fire commissioners of said city for a permit to erect upon said premises a gas works. That said application was considered by said board on the 22nd day of November, 1901, and, upon a motion duly made and seconded that the application be granted three of said commissioners voted "aye" and one "no." That on the same day the Valley Gas & Fuel Company contracted with said Caroline W. Dobbins to build said gas works upon said premises, and that thereafter the work of erecting said gas works was commenced, and was peaceably prosecuted and continued until the 6th day of March, 1902, when the petitioner was arrested as aforesaid. That at said date work to the value of upwards of $25,000.00 had been done and performed upon said gas works. [tr. p. 4-6, fols. 6-9.] That on the 26th of August, 1901, the council of the city of Los Angeles passed an ordinance entitled, "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," being ordinance No. 6663 (new series) hereinbefore mentioned. That on the 25th day of November, 1901, the council of the city of Los Angeles passed an ordinance, No. 6779 (new series),

amending ordinance No. 6663 (new series) in respect to the district outside of which the erection or maintenance of gas works, gas tanks or reservoirs was prohibited. That on the 3rd of March, 1902, the council of the city of Los Angeles passed ordinance No. 7029 (new series), again amending ordinance No. 6663 (new series) with respect to the description of said district; said premises of Caroline W. Dobbins being within the district described in said ordinance No. 6663 (new series) wherein gas works were thereby permitted, but being outside of the district described in each of said ordinances No. 6779 (new series) and No. 7029 (new series), wherein gas works were permitted. [tr. p. 6-10, fols. 9-15.]

That on the 27th day of June, 1902, petitioner was found guilty and fined in the sum of $100, with the alternative sentence of imprisonment in the city jail until such fine was paid in the proportion of one day's imprisonment for every dollar of said fine. That said petitioner appealed from said judgment to the Superior Court of the state of California in the county of Los Angeles, which court affirmed said judgment. That pursuant to said judgment, the petitioner was, at the time of filing his petition in the Supreme Court of the state of California, in the custody of Charles Elton, chief of police of the city of Los Angeles, and was held by said Charles Elton (at said time) in violation of the provisions of the

Constitution of the United States. [tr. p. 10-11, fols. 15-16.]

That the complaint upon which petitioner was charged did not state a public offense, in that said ordinance No. 6663 (new series) is void and invalid, and is in violation of the provisions of the constitution of the state of California, and of the provisions of the Fourteenth Amendment of the Constitution of the United States, in that it is an attempt, on the part of the city of Los Angeles, to make and enforce a law which abridges the privileges and immunities of the citizens of the United States, in that it attempted to prohibit the erection or maintenance of gas works and the storage of gas within the city of Los Angeles outside of the district described in said ordinance, and that said business is not a nuisance, but is a lawful occupation, protected by the provisions of section 19, article 11 of the constitution of the state of California. [tr. p. 11-12, fol. 17.] That ordinance No. 7029 (new series) is void and invalid as against the vested rights acquired by said Caroline W. Dobbins prior to the adoption thereof. That said ordinance is in violation of the provisions of the constitution of the state of California, section 16, article I., providing that no law impairing the obligation of contracts shall ever be passed, and in violation of the provisions of the Constitution of the United States, section 10,

article I., prohibiting any state from passing any law impairing the obligations of contracts, and is in violation of the Fourteenth Amendment of the Constitution of the United States prohibiting any state from making and enforcing any law abridging the privileges or immunities of any citizen of the United States or depriving any person of life, liberty or property without due process of law. That said ordinance was passed in an attempt to foster a monopoly and to protect the Los Angeles Lighting Company, a California corporation, in the enjoyment of a monopoly in the business of manufacturing and distributing gas in the city of Los Angeles and for the purpose of discriminating against said Caroline W. Dobbins, and to prevent her from establishing and maintaining a gas works within the city of Los Angeles. That the said Caroline W. Dobbins claims that she has the right, by virtue of the ordinance passed by the city council of the city of Los Angeles on the 26th day of August, 1901, being ordinance No. 6663 (new series) and under and by virtue of the purchase by her, subsequent to the adoption of such ordinance, of certain lands within the district within which it was lawful to erect gas works by the provisions of said ordinance, and by virtue of a permit granted to her by the board of fire commissioners on November 22nd, 1901, and by reason of the ex-

penditure by her of large sums of money in the attempted erection of said gas works, to continue the erection of said gas works so commenced, but that the authorities of the said city threaten that if the petitioner should again engage in the erection of gas works upon said premises they will continue to arrest and imprison him as often as he shall engage in said work. [tr. p. 12-14, fols. 18-22.]

That there are within the limits of the city of Los Angeles 42.37 square miles of territory, within which limits there are large areas of unoccupied land, and many locations suitable for the purpose of erecting gas works. That within the limits of said prescribed district within which, by the terms of said ordinance No. 7029 (new series), it is made lawful to erect and maintain gas works, there are 1.24 square miles of territory. That the boundaries of said district are very irregular and are not determined by any natural lines or objects, nor with regard to the conditions of the population residing within said district, nor as to whether said district is densely or sparsely populated, nor as to whether there are any tracts of vacant land theren; but that certain of said boundary lines were fixed solely for the purpose of protecting certain gas works and receptacles for the storage of gas owned by the aforesaid Los Angeles Lighting Company,

and that said ordinance thereby discriminates in favor of said company and against said Caroline W. Dobbins. That in the city of Los Angeles, and without the limits of the district within which, under said ordinance No. 7029 (new series), it is lawful to maintain gas works, a large number of gas works are maintained and operated; a plant operated by the Southern Pacific Railroad Company for the purpose of supplying cars with gas, and also the gas works of the California Fruit Canners Association used for the purpose of supplying the works of said company with gas, and also divers private gas plants used for the purpose of supplying sundry persons with gas. That against none of these corporations or persons have the authorities of the city of Los Angeles enforced or attempted to enforce the provisions of said ordinance. That the district in which the gas works of the said Caroline W. Dobbins were being erected is and was a district devoted to manufacturing and commercial enterprises almost exclusively, and in said district there was, prior to the purchase of said property by said Caroline W. Dobbins, a soap factory, a wool pulling factory, three wineries, numerous oil wells, an iron foundary, a brass foundary, and an oil refinery. That in said district there was a great deal of vacant land. That immediately adjacent to the easterly line of

said district are railroad tracks and the Los Angeles river. That, prior to the granting of the permit by the board of fire commissioners to the said Caroline W. Dobbins, the said board and the members thereof visited said premises and the district surrounding the same, and having heard the protests of all persons who appeared before them, decided, by the granting of said permit, that said premises were a suitable place upon which to erect gas works. That since the passage of said ordinance, and while said proceedings were pending against the petitioner, the city council of the city of Los Angeles passed an ordinance creating a district within which it was lawful to erect and maintain oil refineries, and that the limits of said district came within less than one block of the premises upon which the said Caroline W. Dobbins was erecting said gas works, and there has in said district been erected a large oil refinery by permission of the municipal authorities of the city of Los Angeles. That the said gas works were being constructed of incombustible material and so firmly and substantially that there could be no danger from explosions, bursting or leakage. That all of the machinery in place therein is of the most approved pattern and in accordance with the latest devices known in the manufacture of gas, and said works can and will be operated by the use of said ma-

chinery and devices so that there will be no leakage or escape of odors, and the same will not create a nuisance or interfere in any way with the health, comfort, safety or welfare of the inhabitants of the district in which said gas works are located. [tr. p. 14-17, fols. 22-27.]

That said ordinance is in violation of the Constitution of the United States, in that it is an attempt upon the part of the city of Los Angeles to regulate commerce among the several states for the reason that the Davis & Farnum Manufacturing Company did, on the 17th day of September, 1901, at Waltham, in the state of Massachusetts, enter into a contract with the Valley Gas & Fuel Company to erect in the city of Los Angeles certain gas works, and the said Davis & Farnum Manufacturing Company, immediately upon the entering into of said contract commenced, at its manufactory in the city of Waltham, the construction of said gas works, and then and there prepared the necessary iron and steel to be used therein and forwarded the same by railroad transportation to the city of Los Angeles, and then and there employed the petitioner, who was then and there residing at Camden, in the state of New Jersey, to go to the state of California, and then and there engage in the work of erecting said gas works. That the petitioner came to the city of Los Angeles by virtue of said employment

and was engaged in said work at the time of his arrest under the complaint hereinbefore set forth. That the arrest of the petitioner and the other employees engaged in the erection of said gas works interfered with and prevented the said Davis & Farnum Manufacturing Company from carrying out their contract with the Valley Gas & Fuel Company, which said contract was protected by the provisions of the Constitution of the United States in reference to commerce between the several states. [tr. p. 17-18, fols. 27-28.]

Upon this petition a writ was issued and served upon Charles Elton, who made return thereto substantially as follows:

That he was the chief of police of said city of Los Angeles, and the authorized custodian of all prisoners committed by judgment of the police court of said city of Los Angeles. That on the 3rd day of March, 1902, the city council of the city of Los Angeles passed an ordinance No. 7029 (new series), which ordinance was duly signed and approved by the mayor, which went into effect on the 6th day of March, 1902, (being the ordinance amending ordinance No. 6663 (new series), and referred to in the aforesaid petition). That on the 6th day of March, 1902, a complaint was filed in the police court of said city charging the petitioner with the violation of said ordinance. That thereafter, on the 7th day of March, 1902,

said petitioner having been arrested on said charge, was duly arraigned in open court and entered his plea of not guilty. That on June 27th, 1902, said petitioner was duly tried upon said charge, and the cause being submitted, said petitioner was adjudged guilty and sentenced to pay a fine of $100, or in default of such payment to be imprisoned in the city jail in the proportion of one day's imprisonment for each and every one dollar of said fine. That thereupon a commitment was duly issued out of said court and placed in the hands of the respondent committing the petitioner to the custody of the respondent. That said petitioner appealed from the said judgment to the Superior Court of said Los Angeles county, and on the 28th day of June, 1902, said judgment was affirmed. That the respondent further made return that he (at the time of making said return) had said petitioner in his custody and detained said petitioner by virtue of said commitment, and that the fine imposed by such judgment had not, nor had any part thereof, been paid. That upon the hearing of said petition the petitioner was, by the Supreme Court of the state of California, ordered remanded to the custody of Charles Elton, chief of police of the city of Los Angeles. (*In re* Daly, 139 Cal. 216.) [tr. p. 19-33, fols. 30-55.]

The errors assigned by plaintiff in error are substantially as follows, to-wit:

That the Supreme Court of the state of California erred: (1) In deciding that ordinance No. 7029 (new series) was valid as to the rights of plaintiff in error acquired before the passage of said ordinance; (2) In deciding that said ordinance was a valid police regulation of the city of Los Angeles; (3) In deciding that said ordinance was not invalid as an unwarranted interference with the enjoyment of the property rights of the plaintiff in error acquired prior to the adoption of said ordinance, and as an impairment of the obligation of contracts made before the passage of said ordinance; (4) In deciding that said ordinance was not an invalid ordinance as abridging privileges and immunities of the plaintiff in error, or depriving him of property acquired prior to the adoption of said ordinance without due process of law.

That the matters charged in the complaint against plaintiff in error did not constitute a public offense.

That the matters testified to at the trial of said plaintiff in error did not constitute a public offense.

That the said police court had no jurisdiction to issue a warrant for the arrest of the plaintiff in error.

That the defendant in error had no authority to arrest or detain plaintiff in error.

That the Supreme Court of the state of California erred in not discharging the plaintiff in error upon the return of the writ of habeas corpus and in remanding the plaintiff in error to the custody of the defendant in error. [tr. p. 49-52, fols. 84-88.]

## BRIEF OF THE ARGUMENT.

I.

In reviewing a judgment upon a petition for writ of habeas corpus discharging the writ and remanding the petitioner, the only question reviewable by this court is the question whether the plaintiff in error has been denied a right in violation of the constitution, laws or treaties of the United States.

Yick Wo v. Hopkins, 118 U. S. 356.
*In re* Wright, 29 Hun. 361.
*Ex parte* Sternes, 77 Cal. 156.
*Ex parte* McCullough, 25 Cal. 97.
*Ex parte* Grannis, 51 Cal. 375.
Powell v. Pennsylvania, 127 U. S. 678.
Cooley Cons. Lim., 6th Ed. p. 425.
*In re* Coy, 127 U. S. 732.
*Ex parte* Lennon, 166 U. S. 548.
Andrews v. Swartz, 156 U. S. 272.
*Ex parte* Belt, 159 U. S. 95.

II.

The enactment of the ordinance drawn in question was fully within the police powers of the city of Los Angeles.

Constitution of California, Sec. 11, Art XI.
Statutes of California, 1869-70, p. 815.
Charter of Los Angeles, Secs. 2, 25, 27 and 40.

Statutes of California, 1889, p. 458.
Dillon on Mun. Corp., 3rd Ed., Sec. 141.
Butchers' Union v. Crescent City, 111 U. S. 746.
Peel Split Coal Co. v. W. Va., L. R. A. 392.
Munn v. Illinois, 94 U. S. 113.
Westfield G. and M. Co. v. Mendenhall, 142 Ind. 538.
New Orleans Gas Co. v. Louisiana L. Co., 115 U. S. 650.
Tiedeman on Police Powers, Vol. II, p. 740.
Jamieson v. Indiana Natural G. & Oil Co., 28 N. E. 76.
Lanigan v. N. Y. Gas & L. Co., 71 N. Y. 29.
*Ex-parte* Lacy, 108 Cal. 326.
Crowley v. Christensen, 137 U. S. 86.

III.

The allegations of the complaint as to the unreasonableness of this ordinance are not sufficient to sustain a decision against its validity.

Slack v. Jacob, 8 W. Va. 612.
Harmon v. City of Lewiston, 46 Am. St. Rep. 893.
Darnelly v. Cabanns, 52 Ga. 212.
Wells v. Mayor, 43 Ga. 67.
State v. Schlenker, 51 L. R. A. 351.
People v. Cipperly (N. Y.), 4 N. E. 108.
*In re* Wilshire, 103 Fed. 620.
Barbier v. Connolly, 113 U. S. 27.

IV.

All rights in contracts and property are held subject to such regulations as may be made from time to time by the State for the protection of public health, comfort and safety.

Cooley Cons. Lim., 6th Ed. 707.

Mugler v. Kansas, 123 U, S. 669.

Corporation of Knoxville v. Bird, 12 B. J. Lea, 121.

City of Salem v. Maynes, 123 Mass. 372.

Barbier v. Connolly, 113 U. S. 27.

City of New Orleans v. Stafford, 21 Am. Rep. 563.

2 Story Cons. Lim., Sec. 1954.

Jamieson v. Ind. Natural G. & Oil Co., 28 N. E. 76.

V.

A municipality cannot in any manner barter away, part with or abridge its right to exercise the police powers delegated to it by the State.

Cooley Cons. Lim., 6th Ed., p. 341.

Russell on Police Powers, p. 88.

Davenport v. City of Richmond, 81 Va. 636.

Newson v. City of Galveston, 13 S. W. 368.

Northwestern Fertilizing Co. v. Hyde Park, 97 U. S. 659.

VI.

The ordinance complained of is not violative of the commerce clause of the Constitution of the United States.

Sherlock v. Alling, Adm'r., 93 U. S. 99.
United States v. E. C. Knight, 56 U. S. 1.
Railroad Co. v. Husen, 95 U. S. 465.

VII.

The motives of a legislative body in enacting a law cannot be inquired into by the courts.

Fletcher v. Peck, 6 Cranch 87.
Dodge v. Wolsey, 18 How. 371.
U. S. v. Des Moines R. R. Co., 142 U. S. 545.
Hing v. Crowley, 113 U. S. 703.

## ARGUMENT.

### I.

**In reviewing a judgment upon a petition for a writ of habeas corpus discharging the writ and remanding the petitioner, the only question reviewable by this court is the question whether the plaintiff in error has been denied a right in violation of the Constitution, laws or treaties of the United States.**

The case of Yick Wo v. Hopkins, was brought into this court on writ of error to the Supreme Court of the state of California. The plaintiff in error had petitioned that court for a writ of habeas corpus, alleging that he was illegally deprived of his liberty by the defendant in error, and it appeared from the return that he was held in custody by virtue of a sentence of the police court, whereby he was found guilty of a violation of certain ordinances of the city and county of San Francisco. It was contended on behalf of the plaintiff in error that these ordinances were unconstitutional; but the Supreme Court of California decided in favor of the validity of the ordinances and remanded the prisoner. In reviewing the decision of the state court, Mr. Justice Matthews, delivering the opinion of this court, said:

"In the case of the petitioner brought here by "writ of error to the Supreme Court of Califor- "nia, our jurisdiction is limited to the question "whether the plaintiff in error has been denied "a right in violation of the Constitution, laws "or treaties of the United States. The ques- "tion whether his imprisonment is illegal under "the constitution and laws of the state is not "open to us."

Yick Wo v. Hopkins, 118 U. S. 356, 365.

And we submit further that in determining the question of repugnancy to the Constitution or laws of the United States, this court can only consider such matters as should have been considered by the state court. This rule necessarily governs the exercise of appellate jurisdiction, and we therefore, submit that in determining the question whether the plaintiff in error has been denied a right in violation of the Constitution of the United States this court can take into consideration only matters appearing upon the face of the ordinance, together with such facts as the court takes judicial cognizance of.

"The court has no jurisdiction on habeas cor- "pus after conviction in criminal cases to re-try "question of fact upon which the correctness of "the judgment of the court in which the peti- "tioner was convicted depends. * * * So far as "the reasonableness or unreasonableness of the "ordinance depended on questions of fact, the "place for their trial was the court of the police 'justice, and the judgment of that court could "only be reviewed on appeal or writ of certiorari

" by the appellate court having jurisdiction to " hear such appeals."

*In re* Wright, 29 Hun. 361.

And in this case, so far as the reasonableness or constitutionality of the ordinance under consideration depends on questions of fact, the place for their trial was the police court, and the judgment of that court could only be reviewed on appeal, and those questions could not be re-tried by the Supreme Court of the state of California in a habeas corpus proceeding, or re-examined by this court upon writ of error.

" The functions of the writ of habeas corpus " do not extend beyond an inquiry into the juris- " diction of the court in which the judgment was " rendered against the prisoner, and the validity " on its face of the process under which he is held. " An attack upon the judgment is subject to the " rule applicable to collateral assault upon judg- " ments in other cases. When a court has ac- " quired jurisdiction, its subsequent proceedings, " however irregular, are not void. The record " of the court is conclusive as to all matters de- " cided by it and no evidence can be received to " contradict it upon a collateral attack. When " jurisdiction depends upon litigated facts, an " adjudication that the requisite facts exist is " conclusive evidence of jurisdiction until vacated " or set aside in a direct proceeding, and cannot " be contradicted upon a collateral attack."

Syllabus in *ex parte* Sternes, 77 Cal. 156.

" Establish the doctrine that the judgments " and orders of courts may be reviewed on habeas

"corpus upon the ground of error, and appeals "for the correction of errors may be dispensed "with in all cases in which the arrest or impris- "onment of persons is allowed. Every criminal "action, every civil action in which an arrest is "given, and every proceeding for a contempt "could be brought to the supreme court by writs "of habeas corpus. Not only that, but as already "suggested, inferior tribunals would be called "upon to review the judgments of superior tri- "bunals and tribunals of equal grade to inter- "fere with and review each others pro- "ceedings. Such a rule would render all "judicial proceedings amorphous and lead "to the utmost confusion and disorder. "It is well settled that habeas corpus can "be put to no such use, and that its "functions where the party who has appealed to "its aid is in custody under process, do not ex- "tend beyond an inquiry into the jurisdiction of "the court by which it was issued and the va- "lidity of the process upon its face."

*Ex parte* McCullough, 35 Cal. 97.

*Ex parte* Grannis, 51 Cal. 375.

In the case of Powell v. Pennsylvania, 127 U. S. 678, the question of the constitutionality of a law prohibiting the manufacture or sale of oleomargarine was involved. Upon the trial, the defendant offered to prove that the process of manufacture was clean and wholesome, that the article contained the same elements as dairy butter in slightly different proportions, and that the article of food so produced was, in all respects, as wholesome as butter made from pure cream; that

the oleomargarine which he was charged with having unlawfully in possession and selling had been manufactured prior to the passage of the statute complained of; but such evidence was excluded. In its opinion, affirming the judgment of the state court sustaining the validity of the statute, this court said:

"Where a party who is in confinement under "judicial process is brought up on habeas corpus, "health as to require for the protection of the "people the entire suppression of the business "rather than its regulation * * * are questions "of fact, and of public policy, which belong to "the legislative department to determine. And "as it does not appear upon the face of the stat- "ute or from any facts of which the court must "take judicial cognizance, that it infringes rights "secured by the fundamental law, the legislative "determination of those questions is conclusive "upon the courts. * * * The legislature of "Pennsylvania, upon the fullest investigation, as "we must conclusively presume, and upon rea- "sonable grounds, as must be assumed from the "record, has determined that the prohibition of "the sale * * * of any article * * * to take the "place of butter produced from unadulterated "milk, or cream from unadulterated milk, will "promote the public health, and prevent frauds "in the sale of such articles."

Powell v. Pennsylvania, 127 U. S. 678, 685.

"In the great anxiety on the part of our legis- "latures to make the most ample provision for "speedy relief from unlawful confinement, au- "thority to issue the writ of habeas corpus has "been conferred upon inferior judicial officers,

"who make use of it sometimes, as if it were a "writ of error, under which they might correct "the errors and irregularities of other judges "and courts, whatever their relative jurisdiction "and dignity. Any such employment of the writ "is an abuse.

"Where a party is in confinement under judi- "cial process is brought up on habeas corpus, "the court or the judge before whom he is re- "turned will inquire whether the court or officer "issuing the process under which he is detained "had jurisdiction of the case and acted within "that jurisdiction in issuing such process. If "so, mere irregularities or errors of judgment in "the exercise of that jurisdiction must be disre- "garded on this writ and must be corrected either "by the court issuing the process or on regular "appellate proceedings."

Cooley's Constitutional Lim., 6th Ed., p. 425.

*In re* Coy, 127 U. S. 732.

"The only question which can properly be "raised upon this writ is whether the circuit "court exceeded its jurisdiction in holding the "petitioner for a contempt and in imposing upon "him a fine therefor.

"We are not at liberty to consider the testi- "mony or to inquire whether the facts as they "appeared upon the hearing justified the action "of the circuit court. It is only upon the theory "that the proceedings and judgment of the court "were nullities that we are authorized to reverse "its action. It has been too frequently decided "to be now open to question, that a writ of "habeas corpus can not be made use of to per- "form the functions of a writ of error or an "appeal."

*Ex parte* Lennon, 166 U. S. 548, 41 L. Ed. 1110.

See also Andrews v. Swartz, 156 U. S. 272, 39 L. Ed. 422.

*Ex parte* Belt, 159 U. S. 95, 40 L. Ed. 88.

So we submit in this case that the constitutionality of the ordinance complained of must be determined from the face of the ordinance, and from any facts of which the court takes judicial cognizance, but without regard to allegations of other facts contained in the petition of plaintiff in error to the Supreme Court of California for a writ of habeas corpus.

II.

**The enactment of the ordinance drawn in question was fully within the police powers of the City of Los Angeles.**

The ordinance complained of (being ordinance No. 7029, new series) was one prohibiting the establishment or maintenance of gas works, or receptacles for the storage of gas, in the city of Los Angeles outside of a certain prescribed district. The enactment of this ordinance was fully within the police powers delegated to the city by the state.

Section 11 of Article XI. of the constitution of California provides that:

"Any county, city, town or township, may

make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws."

An act of the legislature of California, approved April 4th, 1870, relating to gas companies, gives authority to all municipal corporations in the state to grant to any gas company the privilege of laying down pipes in their streets and alleys, and, in section 4 thereof, provides that—

"They may also control the location and construction of works so that they may be erected in suitable localities to give the least discomforture or annoyance to the public." (Statutes of California, 1869-70, page 815.)

This act was expressly continued in force by subdivision 20, section 19, of the Political Code of the state of California.

The charter of the city of Los Angeles contains the following provisions:

Section 2. "The said corporation shall have the power * * * (Sub. 22) to make and enforce within its limits such local, police, sanitary and other regulations as are not in conflict with general laws, and are deemed expedient to maintain the public peace, protect property, promote the public morals, and to preserve the health of its inhabitants."

Section 25. "It may, by ordinance, declare what constitutes a nuisance, and provide for the abatement and removal thereof."

Section 27. "It (the council) shall by ordinance, regulate, and may prohibit, the keeping of gun powder, acids, or other explosive, combusti-

ble or inflammable material within the limits of the city, or any specified part thereof."

Section 40. "The council shall also have full power to pass ordinances upon any other subject of municipal control or to carry into effect any other powers of the municipality."

Charter of Los Angeles;

Stats. of Cal. 1889, p. 458.

From these provisions it will be seen that the city of Los Angeles has general police powers, and that such powers are, by the statutes of the state and the city charter expressly extended to the regulation and conduct of the business of manufacturing and distributing gas, and of the keeping of combustible or inflammable material within the city.

"Many powers exercised by municipalities fall "within what is known as the police power of the "state, and are delegated to them to be used for "the public good. Of this nature is the authority "to suppress nuisances, preserve health, prevent "fires, to regulate the use and storage of dan- "gerous articles, to establish and control mar- "kets and the like. * * * * Laws and or- "dinances relating to the comfort, health, con- "venience, good order and general welfare of the "inhabitants are comprehenisvely styled police "laws or regulations."

Dillon on Municipal Corporations, 3 Ed. Sec. 141, vol. 1, page 212.

Chancellor Kent, at page 340, Vol. II of his Commentaries, in speaking of the extent of police powers, says: "Unwholesome trades, slaughter "houses, operations offensive to the senses, the

"deposits of powder, etc., may all be interdicted "by law in the midst of dense masses of popula- "tion on the general and rational principle that "every person ought so to use his property as not "to injure his neighbors, and that private inter- "ests must be made subservient to the general "interest of the community," which is cited and approved in Butchers' Union etc. v. Crescent City, 111 U. S. 746, and Peel Split Coal Co. v. West Va., 17 L. R. A. 392.

It is within the police power to regulate all occupations and business enterprises which are of a *quasi*-public nature, or which may, if not restricted in their exercise, be injurious to the public health, safety, morals, or to the general welfare.

Accordingly, it has been held that the police power extends to regulation of the location and conducting of markets, laundries, bakeries, pawn-shops, dairies, warehouses, wharves, ferries, and railways.

"This brings us to inquire as to the principles "upon which this power of regulation rests, in "order that we may determine what is within, and "what is without, its operative effect. Looking "then to the common law, from whence came the "right which the constitution protects, we find "that when private property is 'affected with a "public interest, it ceases to be *juris privati* only.' "This was said by Chief Justice Hale more than "two hundred years ago, in his treatise "De por- "tibus Maris," 1 Harg. Law Tracts, 78, and has "been accepted without objection as an essential

" element in the law of property ever since. Prop-
" erty thus becomes clothed with a public interest
" when used in a manner to make it of public con-
" sequence, and affects the community at large.
" When, however, one devotes his property to a
" use in which the public has an interest, he, in
" effect, grants to the public an interest in that
" use, and must submit to be controlled by the
" public for the common good to the extent of
" the interest he has thus created. He may with-
" draw his grant by discontinuing the use; but,
" so long as he maintains the use, he must sub-
" mit to the control."

Munn v. Illinois, 94 U. S. 113, 126.

" The business of manufacturing and distribut-
" ing illuminating gas, by means of pipes laid in
" the streets of a city, is a business of a public
" character. It is the exercise of a franchise be-
" longing to the state. The services rendered
" and to be rendered for such grant are of a pub-
" lic nature."

Westfield Gas & Milling Co. v. Mendenhall, 142 Ind. 538.

" It is true, as suggested in argument, that the
" manufacture and distribution of illuminating
" gas by means of pipes or conduits placed, under
" legislative authority, in the streets of a town
" or city, is a business of a public character. Un-
" der proper management, the business contri-
" butes very materially to the public convenience,
" while, in the absence of efficient supervision, it
" may disturb the comfort and endanger the
" health and property of the community."

New Orleans Gas Co. v. Louisiana Lighting Co., 115 U. S. 650, 658.

The business of manufacturing and distributing illuminating gas is not only one of a *quasi*-public character, but, as indicated in the case last cited, is one which may, if not regulated, become injurious to the health, comfort or safety of the community in which it is carried on, and, for that reason, is within the police power of the state. This is true even though such business is perfectly lawful, and is not a nuisance *per se*.

Mr. Tiedeman in his work on "Police Powers," volume 2, at page 740, says:

"Where, therefore, certain trades and employ-
"ments which serve some useful purpose and add
"something to the world's wealth are harmful to
"the inhabitants of the locality in which they may
"be conducted; and the harm may be avoided al-
"together or considerably reduced by confining
"them to localities in which the population is
"sparse and the residences are few, it is alto-
"gether permissible to prohibit the prosecution
"of these trades in other localities * * * In
"the same way, may the manufacture of pressed
"hay, the maintenance of dairies, the cultivation
"of land within the limits of a town, and the
"storage of cotton and other combustible ma-
"terial, such as oil and gun powder, be prohibited
"in densely settled parts of the city, and the
"prosecution of such trades be confined to cer-
"tain less dangerous localities."

In the case of Jamieson v. Indiana Natural Gas & Oil Co., et al., 28 N. E. 76, involving the question of the constitutionality of an act of the legislature of Indiana prohibiting the use of an artificial pressure in pipe lines used for the transpor-

tation of natural gas of more than 300 pounds to the square inch, the court said:

"The question, as the record presents it, is one "of power. With questions of policy or expedi- "ency the courts have no concern. License tax "cases, 5 Wal. 462; Herrerich v. State, 101 Ind. "564. If a subject is within the legislative power, "the question whether that power is wisely or un- "wisely exerted is not a judicial one. * * * * "A distinctive and conspicuous feature of this "case is that the property upon which the statute "operates is dangerous and is of an extraordi- "nary species and nature. That natural gas is "a dangerous agency is a matter of common "knowledge; and hence courts take judicial no- "tice of that fact. We know, as the legislature "knew, and as every one knows, that natural gas "is in a high degree inflammable and explosive. "Surely, no court would require evidence to in- "form it that artificial gas will ignite and ex- "plode, or that gun powder and dynamite are "intrinsically dangerous; * * * * But we "need not at this place discuss this phase of the "subject at length for the adjudged cases very "clearly show that the courts will take judicial "notice of the qualities of such things as arti- "ficial gas, kerosene, gun powder, dynamite or "the like. Lanigan v. Gas Light Co., 71 N. Y. "29; Wood v. Insurance Co., 46 N. Y. 421; Com. "v. Peckham, 2 Gray 514; Schlicht v. State, 56 "Ind. 173; Frese v. State, 2 So. Rep. 1; State v. "Hayes, 78 Missouri 308; Lohman v. State, 81 "Ind. 15. * * * * We hold without hesita- "tion that natural gas is so dangerous that its "use may be made the subject of police regula- "tion. Decision after decision recognizes the "principle we have stated and upholds laws regu- "lating the use of property." (Citing cases.)

"The properties of the illuminating gas in or-
"dinary use, its inflammable and explosive char-
"acter, are well understood, and every person of
"mature mind and ordinary intelligence cannot
"be presumed to be ignorant of it."

Lanigan v. New York Gas and Light Co.,
71 N. Y. 29, 33.

That the city of Los Angeles has the power, under the provisions of the state constitution and of its charter, to regulate the location of business enterprises which are not nuisances *per se,* but the conduct of which may injuriously affect the public health, comfort or safety, has been specifically decided by the Supreme Court of California.

In the case of *ex parte* Lacy, 108 Cal. 326, which involved the validity of an ordinance of the city of Los Angeles prohibiting the maintenance of a steam carpet beating machine within 100 feet of any church, school house, residence or dwelling-house, the court, after quoting article XI., section 11, above set forth, stated:

"It will thus be observed that Los Angeles
"city is vested with certain powers by direct
"grant from the constitution, and that grant of
"power is not confined within narrow limits, but
"is broad and far reaching in its scope and ef-
"fect. Under this grant of power the city had
"the right to pass this ordinance, unless it is in
"conflict with general laws; and we know of no
"general laws which conflict with it, unless it
"can be said to be violative of those general
"principles of constitutional liberty which form

" the very foundation of both state and federal " constitution. We see nothing in the language "of this ordinance contrary to these great prin- " ciples of our government. We see nothing " there depriving petitioner of any fundamental " rights. In the exercise of its police and sani- " tary power the city has attempted to regulate " the business of beating carpets by steam power. " Under its constitutional grant it had the right " to regulate this business. The use of steam " power of itself, within municipal territory, has " always been recognized as the proper subject " of regulation; and, in addition here, it may well " be assumed that the dust and other disagree- " able and unhealthy matters arising in such " quantities from the beating of the carpets, as " would naturally be indicated by the use of steam " power, are a constant source of danger and " menace to the good health and general welfare " of the neighborhood where located.

" Conceding the business covered by the pro- " visions of this ordinance not to constitute a " nuisance *per se* and to stand upon different " grounds from powder factories, street obstruc- " tions and the like, still the case is made no bet- " ter for the petitioner. This is not a question of " nuisance *per se*, and the power to regulate is " in no way dependent upon such conditions. In- " deed, as to nuisances *per se*, the general laws " of the state are ample to deal with them. But " the business here involved may properly be " classed with livery stables, laundries, soap and " glue factories, etc., the class of business under- " takings in the conduct of which the police and " sanitary regulations are made to a greater or " less degree by every city in the country. And " in this class of cases it is no defense to the valid- " ity of regulation ordinances to say: 'I am com- " mitting no nuisance, and I insist upon being

"heard before a court or jury upon that question "of fact.' In this class of cases a defendant has "no such right. To the extent that it was ma- "terial in creating a valid ordinance we must as- "sume that such question was decided by the "municipal authorities and decided against the "petitioner and all others similarly situated."

*Ex parte* Lacy, 108 Cal. 326.

The ordinance in question does nothing more than restrict the erection and maintenance of gas works and gas receptacles to a certain district within the city—presumably the most suitable locality for such business. Such restriction is nothing more than a simple and necessary regulation of the business of manufacturing and storing gas. Considering the well known nature and character of illuminating gas, that it is highly inflammable and explosive, and considering further the equally well known fact that its manufacture is inseparably attended with noxious vapors and offensive odor, we submit that the business is one which may become a menace to the safety, health and comfort of the neighborhood in which it is carried on, and that it is, therefore, subject to police regulation.

"As to the enjoyment of property, the rule is "general that it must be accompanied with such "limitations as will not impair the equal enjoy- "ment by others of their property. *Sic utere tuo* "*ut alienum non laedas* is a maxim of universal "application. For the pursuit of any lawful "trade or business, the law imposes similar con- "ditions. Regulations respecting them are al-

" most infinite, varying with the nature of the " business. Some occupations, by the noise made " in their pursuit, some by the odors they en- " gender, and some by the dangers accompanying " them, require regulations as to the locality in " which they shall be conducted. Some by the " dangerous character of the articles used, man- " ufactured or sold, require, also, special quali- " fications in the parties permitted to use, manu- " facture or sell them."

Crowley v. Christensen, 137 U. S. 86, 90.

III.

**The allegations of the Petition as to the unreasonableness of this ordinance are not sufficient to sustain a decision against its validty.**

The petition alleges that the ordinance complained of is unreasonable, and sets forth the fact that the district described in the ordinance, from which gas works are excluded, is one devoted almost exclusively to manufacturing and commercial enterprises; also, that various private gas plants, operated in connection with other business enterprises, for the purpose of supplying them with gas, are permitted by the city to exist, unmolested, within the district where, by the terms of the ordinance, gas works and gas receptacles are prohibited. That the boundaries of said district are very irregular, and that the area of said district is 1.24 square miles while the

area of the whole city is 42.37 square miles. These facts are, however, we submit, insufficient to show the unreasonableness of the ordinance. It is well settled that objections made upon this ground are regarded with great circumspection by the courts, and such objections will be sustained only in very clear cases, because the power to select the subjects of legislation, within constitutional limits, is committed to the law-making branch of the government, and the decision of the question of the expediency or reasonableness of a law is necessarily involved in the exercise of the legislative discretion used in enacting the law.

"For our purposes we must assume that if a "state of facts could exist that would justify such "legislation it actually did exist when the statute "now under consideration was passed. For us "the question is one of power, not of expediency. "If no state of circumstances could exist to jus- "tify such a statute, then we may declare this "one void because in excess of the legislative "power of the state, but if it could, we must "presume it did.

"Of the propriety of legislative interference "within the scope of the legislative power, the "legislature is the exclusive judge."

Munn v. Illinois, 94 U. S. 113.

Peel Split Coal Co. v. West Va., 17 L. R. A. 389.

"The expediency or inexpediency of an act is "a question for the legislature and not for the "court. Whenever an act of the legislature can

" be so construed and applied as to avoid a con-
" flict with the constitution and give it the force
" of law, such construction will be adopted by the
" courts.

" Courts have no right to set aside, to arrest or
" nullify a law passed in relation to a subject
" within the scope of the legislative authority on
" the ground that it conflicts with their notions
" of natural rights, absolute justice or sound
" morality."

Slack et al. v. Jacob et al., 8 W. Va. 612.

" Under a general grant of power over nui-
" sances, town authorities have no power to adopt
" an ordinance declaring a thing a nuisance which
" in fact is clearly not one, but in doubtful cases
" depending upon a variety of circumstances re-
" quiring judgment and discretion their action is
" conclusive."

Harmon v. City of Lewiston, 46 Am. St. Rep. 893.

" When a town council is authorized by law to
" do a particular act at its discretion, the courts
" will not control this discretion and inquire into
" the propriety, economy and general wisdom
" of the undertaking, or into the details of the
" manner adopted to carry the project into exe-
" cution."

Darnelly v. Cabanns, 52 Ga. 212.

Wells v. Mayor, 43 Ga. 67.

" That the constitutionality of a statute ought
" not to be made to depend on the finding of a jury
" on the facts of a case is manifest. If the plain
" provisions of the constitution have been vio-
" lated, or if the act cannot be said to be a proper

"exercise of the police power, in view of the "facts of which judicial notice may be taken, then "the duty of declaring the act invalid is clear. "But in the absence of such finding the act "stands."

State v. Schlenker (Ia.) 51 L. R. R. 351.

"But the defendant takes the broader ground "that the legislature cannot, under the constitu- "tion, prohibit the sale of milk from healthy "cows which in the natural state falls below the "standard fixed by the act unless such milk or "the articles made from it are in fact unwhole- "some or dangerous to public health. How is "that question of fact to be determined? The "court cannot take judicial notice whether the "milk below the standard is or is not unwhole- "some or dangerous to public health. Is that to "be a question for the jury? If so, a court must "charge a jury in each case if they find milk be- "low the standard to be unwholesome, then the "statute is constitutional; if they find it whole- "some, then the statute is unconstitutional. Evi- "dently a constitutional question cannot be set- "tled, or rather unsettled, in that way. The con- "stitutionality would vary with the varying "judgment of juries. Either then the legislature "can, under the constitution, forbid the sale of "milk below a certain standard, whether such "milk be in fact wholesome or not, or else they "cannot do this whether that milk be in fact "wholesome or not. If they may fix a standard, "they must judge whether or not milk below that "standard is wholesome. The courts cannot re- "view that judgment."

People v. Cipperly (N. Y.) 4 N. E. 108.

In the case of *in re* Wilshire, 103 Fed. 620, an

ordinance of the city of Los Angeles prohibiting the erection of advertising signboards of a greater height than six feet, was attacked on the ground that it was unreasonable. The judge in his opinion said:

"I entertain a good deal of doubt in respect to "the reasonableness of the maximum limitation "placed upon the structures in question by the "municipal authorities of the city of Los An-"geles, but the fact that this doubt exists is suffi-"cient reason for the court to decline to adjudge "the ordinance invalid. It is only in clear cases "that such a judgment should be given."

Even if plaintiff's contention as to the unreasonableness of this ordinance, as presented in the state court, had any merit, we submit that, after having been considered by that court, it cannot be urged or considered here. The question of the unreasonableness of an ordinance is one properly left to the decision of the state court. As was said by Mr. Justice Field, in the case of Barbier v. Connolly, 113 U. S. 27:

"Our jurisdiction is confined to a consideration "of the federal question involved, which arises "upon an alleged conflict of the 4th section (of "the ordinance) in question with the 1st section "of the 14th amendment of the Constitution of "the United States. * * The provision is purely "a police regulation within the competency of "any municipality possessed of the ordinary "powers belonging to such bodies. And it would "be an extraordinary usurpation of the authority "of a municipality if a federal tribunal should un-

"dertake to supervise such regulations. It may be "a necessary measure of precaution in a city "composed largely of wooden buildings like San "Francisco, that occupations, in which fires are "constantly required, should cease after certain "hours at night until the following morning; "and of the necessity of such regulations the mu- "nicipal bodies are the exclusive judges; at least "any correction of their action in such matters "can come only from state legislation or state "tribunals."

Barbier v. Connolly, 113 U. S. 27.

There is nothing on the face of the ordinance showing that it is unreasonable or oppressive, but, on the contrary, it is, by its terms, applicable to all persons alike, and, so far as can be judged from the description of the district set forth therein, outside of which gas works or gas receptacles may not be erected or maintained, the territory contained in such district is an extensive one.

Since then the ordinance is free from patent defects, and its reasonableness has been sustained by the state courts, the highest judicial tribunal will not go behind that decision.

IV.

**All rights in contracts and property are held subject to such regulations as may be made from time to time by the state for the protection of public health comfort and safety.**

The contention of plaintiff in error, as evidenced by his petition for a writ of habeas corpus, is that the grant of the permit by the board of fire commissioners to Caroline W. Dobbins for the erection of gas works upon her premises and the work performed by her and on her behalf on said premises and the expenditures made by her in the attempted erection of said gas works thereon, conferred vested rights upon Caroline W. Dobbins and resulted in a contract between her and the city of Los Angeles, and that said ordinance abridged or took away said rights and impaired the obligations of said contract, and that said ordinance abridged or attempted to abridge the privileges, immunities of Caroline W. Dobbins and of the petitioner, as the employe, of said Caroline W. Dobbins and of her said contractors, in that it prevented the erection and completion of said gas works.

The contract which plaintiff in error assumes to exist between Caroline W. Dobbins and the city is one arising out of the grant by the board of fire commissioners of a permit for the erection of the gas works. The per-

mit in question was granted in the exercise of the police power for the protection of property from fire, under an ordinance requiring every person proposing to establish or conduct a livery stable, blacksmith shop, gas works, or any factory where power other than animal or water power is used, to first obtain a permit from the fire commissioners therefor. The effect of the permit was simply to remove the restriction upon the use of property imposed by the ordinance, and to give to the owner of the property the privilege of using it just as he might if no such restriction existed. The grant of such a permit can in no sense be deemed to be the grant of a franchise, or of a property right, and therefore no contractual obligations can spring out of it. After receiving such a permit the owner of property is in no better position to claim that the city is estopped to impose regulations prohibiting the use of the property contemplated by the permit, than he would be if the ordinance requiring the procurement of a permit had never existed.

Furthermore, if this ordinance is within the scope of the police power of the city, as we have shown to be the case, whatever contracts or rights are held by plaintiff in error or by Caroline W. Dobbins, they must be subject to this power.

Mr. Cooley, in his work on constitutional limitations, in discussing the police power of the

states, especially with respect to the impairment of obligations of contracts by the exercise of that power, says:

"All contracts and all rights, it is declared, are "subject to this power; and not only may regula- "tions which affect them be established by the "state, but all such regulations must be subject "to change from time to time, as the general well- "being of the community may require, or as the "circumstances may change, or as experience "may demonstrate the necessity.

"Perhaps the most striking illustrations of the "principle here stated will be found among the "judicial decisions, which have held that the "rights insured to private corporations by their "charters, and the manner of their exercise, are "subject to such new regulations as from time to "time may be made by the state with a view to "the public protection, health and safety, and "in order to guard properly the rights of other "individuals and corporations. Although these "charters are to be regarded as contracts, and "the rights assured by them are inviolable, it "does not follow that these rights are at once, "by force of the charter contract, removed from "the sphere of state legislation, and that the "charter implies an undertaking, on the part of "the state, that in the same way in which their "exercise is permissible at first, and under the "regulations then existing and those only, may "the corporators continue to exercise their "rights, while the artificial existence continues.

"The obligation of the contract by no means "extends so far; but, on the contrary, the rights "and privileges which come into existence under "it are placed upon the same footing with other "legal rights and privileges of the citizen, and "subject in like manner to proper rules for their

"due regulation, protection and enjoyment."

Cooley Cons. Lim., 6th Ed. 707.

"It cannot be supposed that the states intend-
"ed by adopting that amendment (the 14th), to
"impose restraints upon the exercise of their
"powers for the protection of the safety, health
"or morals of the community. * * * The
"principle that no person shall be deprived of life,
"liberty or property without due process of law,
"was embodied, in substance, in the constitution
"of nearly all, if not all, of the states at the time
"of the adoption of the Fourteenth Amendment;
"and it has never been regarded as incompatible
"with the principle,—equally vital because es-
"sential to the peace and safety of society,—that
"all property in this country is held under the
"implied obligation that the owner's use of it
"shall not be injurious to the community." * *

"A prohibition simply upon the use of prop-
"erty for purposes that are declared by valid
"legislation to be injurious to the health, morals
"and safety of the community, cannot in any just
"sense be deemed a taking or an appropriation of
"property for the public benefit. Such legisla-
"tion does not disturb the owner in the control or
"use of his property for lawful purposes, nor
"restrict his right to dispose of it, but is only a
"declaration by the state that its use by any one
"for certain forbidden purposes is prejudicial to
"the public interests."

Mugler v. Kansas, 123 U. S. 669.

In the case of the Corporation of Knoxville v. Bird, 12 B. J. Lea, 121 (Tenn.), the defendant was arrested and convicted for the violation of an ordinance prohibiting the erection of wooden buildings in a certain district. The defendant

contended that the ordinance was unconstitutional, on the ground that it impaired the obligations of his contracts with the lessor of the lot upon which his building was being erected and with the builders who had commenced and were engaged in the erection of the building thereon at the time the ordinance was adopted; and also on the ground that it impaired his vested rights. The court held that there was no merit in this contention, and in its discussion of the constitutional question thus raised, said:

"It is true the exercise of this power by the "city authorities tends in a considerable degree "to impinge upon and restrain the free use of "the property of parties living within the pre- "scribed limits, the highest idea of property be- "ing that over which man has complete dominion, "with which he may do as he pleases. But it is "an essential element of every organized society "that even this right is to be enjoyed in subordi- "nation to the general public interest of the whole "body. For the benefits conferred by the pro- "tection given by law, and the general advan- "tages received from organized society, this en- "tire freedom is subject to be abridged and reg- "ulated within certain bounds, only limited by "the requirements that private property shall not "be taken or appropriated for public use without "compensation being first made for the property "thus used. The defendant in this case has only "been required to submit his rights to the rule "that a man must enjoy them subject to such

"regulation as the interest of the society of "which he is a member may demand."

Corporation of Knoxville v. Bird, 12 B. J. Lea, 121.

And in the case of City of Salem v. Maynes, 123 Mass. 372, it was held that an ordinance providing that a wooden building should not be built within a certain distance of any other wooden building, applied to one for the erection of which a contract had been made and lumber bought and prepared before the ordinance took effect. In the case of City of New Orleans v. Stafford, 21 Am. Rep. 563, the court held that an act of the legislature providing that no private market should be kept within 12 squares of a public market in the city of New Orleans was not unconstitutional as taking away the property or vested rights of those keeping, and holding licenses to keep, private markets within the prescribed limits at the time of the passage of the act.

"The fourteenth amendment of the United "States constitution is not designed to interfere "with the power of the state sometimes termed "its 'police power' to prescribe regulations to "promote the health, peace, morals, education "and good order of the people."

Barbier v. Connolly, 113 U. S. 27.

"All property and vested rights of individuals "are subject to such regulations of police as the "legislature may establish."

2 Story Con. Sec. 1954.

"It is not too much to say that as against the "police power there is no such thing as a vested "right. * * * No investement, however great, "can so vest a right as to preclude the exercise "of a great governmental power, such as that "under which regulations for the protection of "the health and safety of persons are enacted. "This principle is supported by many decisions. "In Beer Co. v. Mass., 97 U. S. 32, it was said, "'If the public safety or public morals require "the discontinuance of a manufacture or traffic, "the hands of the legislature cannot be stayed "from providing for its discontinuance by any "inconvenience which individuals or corpora-"tions may suffer."

Jamieson v. Ind. Natural Gas & Oil Co., 28 N. E. 76, 79.

Applying the principles laid down in the foregoing decisions to the claim of the plaintiff in error that the ordinance in controversy is unconstitutional and void, because it takes away vested rights belonging to Caroline W. Dobbins, and impairs the obligations of a contract existing between her and the city of Los Angeles, and abridges the privileges and immunities of Caroline W. Dobbins and of the petitioner, we submit that no rights, property, contracts, privileges or immunities, can exist that are not subject to the police power, and that if, as we have shown to be the case, this ordinance is within the scope of the police power of the city, there is no merit in the contention of plaintiff in error. Furthermore,

as to any rights, property, privileges or immunities of Caroline W. Dobbins, it does not appear that the plaintiff in error has any legal interest in them. His petition shows that he was in charge of the erection of the gas works as foreman for Davis & Farnum Manufacturing Company, a Massachusetts corporation, which was erecting the gas works for the Valley Gas & Fuel Company, which had a contract with Caroline W. Dobbins. The employers of the petitioner made a similar attack upon the validity of this ordinance in the case of Davis and Farnum M'f'g. Co. v. City of Los Angeles, 189 U. S. 207, and this court said:

"In order to determine the exact property "rights at stake in the case under consideration "it should be borne in mind that this is not a bill "by Mrs. Dobbins, the owner of the land and of "the proposed gas works, to enjoin the "city from interfering with carrying out "the permit she had obtained to erect these "gas works, nor by the Valley Gas and Fuel "Company, with which she had a contract to "erect these works; but by a sub-contractor, "which had made a contract with the Gas and "Fuel Company to erect for it, and upon prem-"ises to be designated by Mrs. Dobbins, a water "tank and gas holder; and, without even alleg-"ing that the Gas and Fuel Company had refused "to carry out its contract, or pay to plaintiff "damages, or that Mrs. Dobbins had refused to "settle any claim the Gas and Fuel Company "might have against her, seeks to enjoin the city "of Los Angeles in the assumed right of Mrs.

" Dobbins from interfering with its servants and " employes, and from preventing plaintiff from " carrying out the work of erecting the water " tank and gas holder, and also to desist and re- " frain from enforcing its ordinances. It sets " up no contract of its own with the city which " the municipal ordinances have impaired, but a " contract of the city with Mrs. Dobbins, to which " it was no party, in which it had no direct in- " terest."

Davis and Farnum Mfg. Co. v. City of Los Angeles, 189 U. S. 218.

The interest of the plaintiff in error in any rights, contracts or privileges of Mrs. Dobbins that are alleged to be impaired by the ordinance in question is even more remote than was the interest of his employer, which this court has already held was "no legal interest" at all. So that, the question of the impairment of Mrs. Dobbins' contract, or the deprivation of any of her rights, or privileges, is altogether irrelevant in this case.

V.

**A municipality cannot in any manner barter away, part with or abridge its right to exercise the police powers delegated to it by the state.**

It has already been shown that the permit granted to Caroline W. Dobbins by the board of fire commissioners to erect the gas works did not constitute, or result in, a contract between her and the city and we now submit the proposition that no contract could be made by the city which would have the effect of disabling or abridging its police power.

"It would seem, therefore, to be the prevail-
"ing opinion, and one based upon sound reason,
"that the state cannot barter away, or in any
"manner abridge or weaken, any of those essen-
"tial powers which are inherent in all govern-
"ments, and the existence of which in full vigor
"is important to the well-being of organized so-
"ciety; and that any contracts to that end are
"void, upon general principles, and cannot be
"saved from invalidity by the provision of the
"national Constitution, now under considera-
"tion."

Cooley Cons. Lim., 6th Ed. p. 341.

"The general principle is that it is not within
"the power of a common council to bind its legis-
"lative capacities by any arrangement or stipu-
"lation so as to disable itself from enacting any
"laws that might be deemed essential for public
"good."

Russell on Police Powers, page 88.

In the case of Davenport v. City of Richmond, 81 Va. 636, the city council had conveyed to defendant's grantors certain premises near the outskirts of the city to be used as a powder magazine. A subsequent ordinance declared the said magazine dangerous to life and property and directed it to be removed, at the expense of the owner, to some more remote locality. Davenport claimed that the ordinance was invalid and unconstitutional, because it deprived him of vested rights and impaired the obligation of a contract entered into between the city and his grantors, and took from him his property without compensation. The court said:

"Upon the principles recognized by this court "in R. F. and R. R. Co. v. City of Richmond, 26 "Gratt., 83, we are of opinion that this position "is not well taken. In other words, that the "withdrawal of the privilege previously granted "to the defendants—to erect and maintain a "powder magazine within the city limits—was "a valid exercise of the police power with which, "to that extent, the city is invested by the legis-"lature, and with reference to which the privilege "was granted and accepted. And hence the in-"convenience of which the defendants complaint "*damnum absque injuria.*

"However difficult it may be, if it is possible "at all, to exactly define the limits of that power, "there is no doubt that it extends to the protec-"tion of the lives, health, morals and safety of all "persons in the community, and that it cannot, "by contract or otherwise, be parted with by a

"municipal corporation to which it may be dele-
"gated. * * * * * * * * * * * * * *

"It is sufficient to say that the storage of gun-
"powder in a city or town, being attended with
"danger, its regulation is a matter within the
"power of corporate authorities, and consequent-
"ly the judgment of the city council as expressed
"in the ordinance requiring the removal of the
"magazines in question, is conclusive upon the
"courts.

"The Hastings court, therefore, did not err in
"instructing the jury that 'the fact that the city
"of Richmond in 1866 sold to the defendants, or
"to those under whom they claim title, the site
"of the powder magazines, now ordered by the
"council to be removed, for the purpose or with
'the knowledge that the same was to be used
"for the erection of powder magazines, does not
"prevent the city council from passing the ordi-
"nance of August 17, 1882, if, in the judgment
"of that body, the safety or convenience of the
"people demands the removal of said mag-
"azines.'"

Davenport v. City of Richmond. 81 Va. 636.

In the case of Newson v. City of Galveston, 13 S. W. 368, the plaintiff was granted a permit under a city ordinance to establish and maintain a meat market at a particular location. Thereafter the city council so amended the ordinance under which plaintiff's permit was granted as to make it unlawful to conduct a meat market in the district in which plaintiff's market was situated. It was contended that the amended ordinance impaired his vested rights and the obligation of his con-

tract with the city. With reference to this contention the court said:

"Police powers possessed by such (municipal) "corporations cannot be fettered by contracts, "but must be left free to be exercised at all times "whether in conferring, or withdrawing privileges once conferred. If a license tax had been "paid for a year, this would not deprive the city "of the power to withdraw the privilege before "its expiration if the public welfare demanded it. "Much less would the fact that the city for a "time had received the tax and granted the privilege make it incumbent on it to continue to do "so. If appellant expended money in preparing "his private market place for the conduct of his "business, he did so with the full knowledge that "the city might at any time forbid the business "(market) to be there conducted."

Newson v. City of Galveston, 13 S. W. 368.

In the case of Northwestern Fertilizing Co. v. Hyde Park, 97 U. S. 659, it was held that a grant by the state to a private corporation of the privilege of manufacturing fertilizer could be abrogated by an ordinance of the village of Hyde Park to which general police power had been subsequently delegated by the state. That the fertilizing company could thus be compelled to abandon the works which it had erected and established at a cost of more than $200,000, and that the village ordinance was not such impairment of the obligation of the charter contract

between the company and the state as is forbidden by the constitution of the United States.

Even if it be assumed, therefore, that by the grant of the permit by the board of fire commissioners for the establishment of the gas works by Caroline W. Dobbins, the city authorities consented and agreed to the erection and maintenance of such works, yet it is clear that the city, by such consent, was not deprived of the right, under its police power, subsequently to prohibit the erection or maintenance of the same.

## VI.

### The ordinanc complained of is not violative of the commerce clause of the Constitution of the United States.

Plaintiff in error claimed in his petition that ordinance No. 7029 (new series) was in violation of the Constitution of the United States in that it was an attempt on the part of the city of Los Angeles to regulate commerce among the several states, for the reason that the Davis & Farnum Mfg. Co., his employer, a Massachusetts corporation, made a contract in that state with the Valley Gas & Fuel Co., a California corporation, which was the contractor with Caroline W.

Dobbins for the erection of the gas works, and that the said Davis & Farnum Co. prepared the necessary material at its factory in Massachusetts and delivered the same in Los Angeles and employed the plaintiff in error, who was then residing in New Jersey, to go to Los Angeles and engage in the work of erecting said gas works; that plaintiff in error was so engaged at the time of his arrest, and that the Davis & Farnum Mfg. Co. was thereby prevented from carrying out its contract with the Valley Gas & Fuel Co.

We submit that these facts do not show any attempted interference on the part of the city with interstate commerce. In all the cases in which the legislation of a state has been held to be void for interference with the commercial power of congress, "the legislation created, in the way of tax, license, or condition, a direct burden upon commerce, or in some way directly interfered with its freedom."

Sherlock v. Alling, Admr., 93 U. S. 99, 103.

The case cited was one in which this court considered the validity of a statute of Indiana allowing actions for torts resulting in the death of the person injured, which, it was alleged, if applied to cases of marine torts, would constitute a new burden upon commerce; and the court said:

"That statute imposes no tax, prescribes no "duty, and in no respect interferes with any reg-

"ulations for the navigation and use of vessels. "It only declares a general principle respecting "the liability of all persons within the jurisdic- "tion of the state for torts resulting in the death "of parties injured. And in the application of "the principle it makes no difference where the "injury complained of occurred in the state, "whether on land or on water. General legisla- "tion of this kind, prescribing the liabilities or "duties of citizens of a state, without distinction "as to pursuit or calling, is not open to any valid "objection because it may affect persons engaged "in foreign or interstate commerce. Objection "might with equal propriety be urged against "legislation prescribing the form in which con- "tracts shall be authenticated, or property de- "scend or be distributed on the death of its "owner, because applicable to the contracts or "estates of persons engaged in such commerce. "In conferring upon congress the regulation of "commerce, it was never intended to cut the "states off from legislating on all subjects re- "lating to the health, life, and safety of their "citizens, though the legislation might indirectly "affect the commerce of the country. Legisla- "tion, in a great variety of ways, may affect com- "merce and persons engaged in it without con- "stituting a regulation of it, within the meaning "of the Constitution."

Sherlock v. Alling, Administrator, 93 U. S. 103.

In granting to congress the power to regulate commerce among the states the police power of the states was not surrendered, and the fact that a police regulation indirectly affects commerce—as most police regulations must—does not bring

it into conflict with the power to regulate commerce. As was said in the case of United States v. E. C. Knight Co., 156 U. S. 1, 13:

"It is vital that the independence of the commercial power and of the police power * * * should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states."

In the case of Railroad Co. v. Husen, 95 U. S. 465, 470, this court said:

"We admit that the deposit in congress of the power to regulate foreign commerce and commerce among states was not a surrender of that which may properly be denominated police power. What that power is, it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of domestic order, morals, health, and safety. As was said in Thorp v. The Rutland & Burlington Railroad Co., 27 Vt. 149, 'it extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the state. According to the maxim, *sic utere tuo ut alienum non laedas*, which, being of universal application, it must, of course, be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others."

Railroad Co. v. Husen, 95 U. S. 470.

It is, by the decisions of this court, a well established principle that commerce between the states may be incidentally and legitimately affected by a state law passed under the police

powers of the state and in the exercise of its jurisdiction over persons and property within its limits for the security of the property, lives, health and comfort of persons.

And we submit that the fact that the materials for the construction of the gas works in question were prepared and sold in the state of Massachusetts, or the fact that the plaintiff in error was hired in the state of New Jersey to superintend the erection of said works in Los Angeles, has no bearing upon the question whether the city has the power of prescribing regulations governing the erection and maintenance of gas works.

## VII.

**The motives of a legislative body in enacting a law cannot be inquired into by the courts.**

It is alleged in the petition that the ordinance referred to was adopted, not for the purpose of protecting any public interest or preserving any public right, but that it was suggested and formulated by the Los Angeles Lighting Company, and was adopted by the city council solely for the purpose of protecting that company in the enjoyment of a monopoly in manufacturing and distributing gas in the city of Los Angeles,

and for the purpose of hindering and frustrating the efforts of Mrs. Dobbins to carry on her lawful business. That courts cannot inquire into the motives which influenced members of the legislature in passing a law has been the settled rule of this court since the decision of the case of Fletcher v. Peck, 6 Cranch 87. In the case of Dodge v. Wolsey, 18 Howard 371, Mr. Justice Campbell said: "The courts cannot look to the corruption, the blindness, nor the mischievious effects of state legislation to determine its binding operation." And in the case of United States v. Des Moines R. R. Co., 142 U. S. 545, this court said: "Although it has sometimes been argued at the bar that the courts ought to inquire into the motives of the legislature when fraud and corruption are alleged, and annul their actions if the allegations were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered into."

"The rule is general with reference to the "enactments of all legislative bodies, that the "court cannot inquire into the motives of the "legislators in passing them, except as they may "be disclosed on the face of the acts or inferable "from their operation considered with reference "to the condition of the country and existing "legislation."

Hing v. Crowley, 113 U. S. 703.

For the reasons and upon the authorities cited, we submit that the decision of the state court under review in this case contains no error justifying a reversal, and should be affirmed.

Respectfully submitted,

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HERBERT J. GOUDGE,

*Attorneys for Defendant in Error.*

# Supreme Court of the United States.

Nos. 107 and 108.—October Term, 1904.

Caroline W. Dobbins, Plaintiff in Error, vs. The City of Los Angeles. } In error to the Supreme Court of the State of California.

[November 14, 1904.]

This is a writ of error to the Supreme Court of the State of California seeking a reversal of the judgment of that court, affirming the judgment of the Superior Court dismissing the complaint of the plaintiff in error against the city of Los Angeles.

Plaintiff in error filed a bill of complaint against the city of Los Angeles, seeking an injunction to restrain the enforcement of certain ordinances prohibiting the erection or maintenance of gasworks except within prescribed limits in said city.

The case was decided upon demurrer to the bill. The complaint sets forth in substance: That on August 26, 1901, the city council of Los Angeles adopted an ordinance making it unlawful to erect and maintain gasworks outside of a certain district described in the ordinance and fixing penalties for the violation thereof. While this ordinance was in force the plaintiff in error made a contract with the Valley Gas and Fuel Company for the erection of certain gasworks upon territory to be thereafter designated by her, and on September 28, 1901, purchased lands within the limits of the privileged district as fixed by the ordinance. That on the 22d of November, 1901, upon application to the board of fire commissioners of the city of Los Angeles, that body granted to the plaintiff in error the privilege to erect the gasworks upon the territory aforesaid. Thereupon the plaintiff in error directed the Valley Gas and Fuel Company to proceed with the erection of the works upon the premises so purchased. That the foundations were constructed at a cost of upwards of $2,500. After the foundations had been nearly completed the city council, on November 25, 1901, passed a second ordinance, amending the first ordinance, and thereby so limiting the boundaries of the territory within which the erection of gasworks was permitted in said city as to include the premises of the plaintiff in error within the prohibited territory. The work of constructing the works was continuously prosecuted until the latter part of February, 1902, when the plaintiff in error alleges

that the city of Los Angeles, combining and confederating with one James R. C. Burton and other persons unknown, caused certain employes of the company engaged in the erection of said works to be arrested, charged with the violation of the said city ordinance. Other arrests were made on the first and third of March, 1902. On the third of March, 1902, the city council passed a third ordinance, amending the ordinance of November 25, 1901, in respect to the description of the district within which gasworks could be erected. On March 6, 1902, the city caused the arrest of certain persons employed by the company in charge of the erection of the works, charged with the violation of the amended city ordinance.

It is averred that the adoption by the city council of the ordinances aforesaid and the attempted enforcement thereof were instigated by officers and agents of the Los Angeles Lighting Company, a corporation engaged in manufacturing and supplying gas in said city, and having a monopoly of said business therein. It is further averred that the action of the municipal authorities complained of was taken for the purpose of protecting the said Los Angeles Lighting Company in the enjoyment of its monopoly. It is also claimed that the territory surrounding the premises of the plaintiff in error, and within which, under the ordinance of August 26, in force when the complainant made her purchase and located and begun the erection of the gasworks it was lawful so to do, and which by the amending ordinances was added to the prohibited territory, was and is a district devoted almost exclusively to manufacturing enterprises. Within its boundaries there is a large amount of vacant and unoccupied land, which is and will continue to be useless except for the erection of manufacturing establishments; within which were located at that time a soap factory, a wool pulling factory, three wineries, numerous oil wells in operation, iron foundry, brass foundry, oil refinery; immediately east of said tract railroads and an extensive tannery; immediately north the oil tanks and refinery of the Standard Oil Company. That the works being constructed for the plaintiff in error are to be built upon concrete foundations with a superstructure of non-combustible material; so that there can be no danger from explosion, bursting or leaking. The machinery is to be of the most approved pattern and that there can be no leakage or escape of odors or any interference with the health, comfort or safety of the inhabitants of the city.

The plaintiff in error, relying upon the protection of the Fourteenth Amendment to the Constitution of the United States, prays that the permit granted by the board of fire commissioners be declared to be a valid and subsisting contract between the city of Los Angeles and herself, and that all ordinances passed by the city council in contravention thereof be declared void; that the defendant be enjoined from enforcing said ordinances against the plaintiff, from delaying or interfering with the

action of the plaintiff in erecting the said works, from interfering with the maintenance and operation of the same, and for general relief.

Mr. Justice DAY delivered the opinion of the Court.

As this case was decided upon demurrer to the complaint, the allegations thereof must be taken as true. The question presented involves the right of the plaintiff in error to invoke the protection of the Fourteenth Amendment against alleged infraction of her rights by the action of the city council in passing and enforcing the ordinances which prevent the carrying on of the business of making and selling gas to the people of the city.

Before entering upon a consideration of the case it is essential to examine briefly the extent to which constitutional and legislative control have been exercised by authority of the State of California in reference to the erection and maintenance of gasworks in cities. The constitution of the State, section 19, article XI, provides that "In any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this State, shall, under the direction of the superintendent of streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe, for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight, or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof." By the act of the State legislature of April 4, 1870, (Stats. of 1869–70, p. 815,) it was provided that cities may control the location and construction of works so that they may be erected in suitable localities to give the least discomfiture or annoyance to the public. By the constitution of the State of California it is provided (art. XII, sec. 11) that any county, city, town or township may make and enforce within its limits all such local, police, sanitary or other regulations as are not in conflict with the general laws. In these provisions may be found a grant of power to the city of Los Angeles to control the location and erection of gasworks within the city limits. In the grant of such control the fact is recognized that while the erection and maintenance of such works is a lawful business pursuit and one essential to the welfare and comfort of the community, its prosecution requires the use of materials of such a character, and such construction and maintenance of the works as not to be dangerous or offensive when carried on within thickly populated parts of the city, and such rights are conse-

quently justly subject to regulation in such manner as to protect the public health and safety. The Supreme Court of California, as may be gathered from its opinion in this case, based its decision upon the proposition that as the exercise of the right to control the location and construction of gasworks is within the power conferred by the legislature upon the city, the act of the municipality in question can not be reviewed, because so to do would be a substitution of the judgment of the court for that of the council upon a matter left within the exclusive control of the legislative body. To support this conclusion a citation is made from the opinion of this court in the case of *Munn* v. *Illinois*, (94 U. S. 113,) to the effect that the legislature is the exclusive judge of the propriety of police regulation when the matter is within the scope of its power. The observations of Mr. Chief Justice Waite in that connection had reference to the facts of the particular case and were certainly not intended to declare the right of either the legislature or a city council to arbitrarily deprive the citizen of rights protected by the Constitution under the guise of exercising the police powers reserved to the States. It may be admitted that every intendment is to be made in favor of the lawfulness of the exercise of municipal power, making regulations to promote the public health and safety, and that it is not the province of courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people in the community. But notwithstanding this general rule of the law, it is now thoroughly well settled by decisions of this court that municipal by-laws and ordinances, and even legislative enactments undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view to determining whether the law or ordinance is a lawful exercise of the police power, or whether under the guise of enforcing police regulations there has been an unwarranted and arbitrary interference with the constitutional rights to carry on a lawful business, to make contracts, or to use and enjoy property. In *Lawton* v. *Steele*, (152 U. S. 133–37,) Mr. Justice Brown, speaking for the court, said upon this subject:

"To justify the State in thus interposing its authority in behalf of the public it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

And, again, in *Holden* v. *Hardy*, (169 U. S. 566,) the same justice, again speaking for the court, said:

"The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class."

And in *Connolly* v. *Union Sewer Pipe Co.*, (184 U. S. 540, 558,) Mr. Justice Harlan, delivering the opinion of the court, said:

"The question of constitutional law to which we have referred [the equal protection of the laws] cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the State, which, as often stated by this court, were not included in the grants of power to the general government, and therefore reserved to the States when the Constitution was ordained. But as the Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law. No right granted or secured by the Constitution of the United States can be impaired or destroyed by a State enactment, whatever may be the source from which the power to pass such enactment may have been derived. 'The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is the supreme law.' The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health and the public safety, but if, by their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void. (*Gibbons* v. *Ogden*, 9 Wheat. 1, 210; *Sinnot* v. *Davenport*, 22 How. 227, 243; *Missouri, Kansas & Texas Ry.* v. *Haber*, 169 U. S. 613, 626.)"

This principle was recognized and applied in the Supreme Court of California in a case decided later than the one under consideration, (*In re Smith*, decided May 31, 1904, 77 Pacific Rep. 180,) in which it was held that a county ordinance making it a misdemeanor to maintain a gasworks within a sparsely settled district was unreasonable and void. In that case the court, after again quoting from *Munn* v. *Illinois*, to the effect that the courts will not interfere with laws which are within the scope of legislative power, well said:

"But running current with this principle, and to be read with it is one of equal importance, namely, that where the police power is exerted to regulate a useful business or occupation, the legislature is not the exclusive judge as to what is a reasonable and just restraint upon the constitutional right of the citizen to pursue any trade, business or vocation which in itself is recognized as innocent and useful to the community. It is always a judicial question if any particular regulation of such right is a valid exercise of police power, though the power of the courts to declare such regulation invalid will be exercised with the utmost caution, and only where it is clear that the ordinance or law declared void passes the limits of the police power and infringes upon rights guaranteed by the constitution."

Applying the principles settled by these decisions to the allegations of the bill, admitted by the demurrer, we think a case is made which called for the protection of the courts against arbitrary interference with the rights of the plaintiff in error. Complying with the terms of the ordinance which was in force when the plaintiff in error was about to begin the erection of the gasworks in controversy, a tract of land was purchased within the district wherein the erection of such works was permitted, a contract was entered into for the construction of the works, a considerable sum of money was expended. It may be admitted as being a correct statement of the law as held by the California Supreme Court that, notwithstanding the grant of the permit, and even after the erection of the works, the city might still, for the protection of the public health and safety, prohibit the further maintenance and continuance of such works, and the prosecution of the business, originally harmless, may become, by reason of the manner of its prosecution or a changed condition of the community, a menace to the public health and safety. In other words, the right to exercise the police power is a continuing one, and a business lawful to-day may in the future, because of the changed situation, the growth of population or other causes, become a menace to the public health and welfare, and be required to yield to the public good. (*Fertilizing Co.* v. *Hyde Park*, 97 U. S. 659; *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S. 672.) But the exercise of the police power is subject to judicial review and property rights cannot be wrongfully destroyed by arbitrary enactment. It was averred that the works would be so constructed so as not to interfere with the health or safety of the people. No reasonable explanation for the arbitrary exercise of power in the case is suggested. The narrowing of the limits within which the plaintiff in error, in compliance with the ordinance of the city and the permit of the board of fire commissioners, was proceeding to erect the gasworks, to the smaller and more limited section, was not demanded by the public welfare, and, taking the facts as alleged in the bill, seems rather to have been actuated by a purpose to exclude the plaintiff in error from further prosecution of the enterprise. The limits of the privileged district were fixed late in August. In September the complainant began the construction of the works. In November, without changed conditions or adequate reason, the council by an amended ordinance draw a line embracing a part of the district including the complainant's property, and declare that, too, shall be prohibited territory. This action is strongly corroborative of the allegations of the bill that the purpose was not police regulation in the interest of the public but the destruction of the plaintiff's rights and the building up of another company still within the privileged district after the passage of the amendment. Being the owner of the land and having partially erected the works the plaintiff in error had acquired property rights and was

entitled to protection against unconstitutional encroachments which would have the effect to deprive her of her property without due process of law. It is averred in the bill of complaint that the district within which the works were being erected was one given over to manufacturing enterprises, some of which were fully as obnoxious as gasworks possibly could be; that it contained large spaces of unoccupied lands, worthless except for manufacturing purposes, and by clear inference that there was nothing in the situation which rendered it necessary, in order to protect the city from a noisome and unhealthy business, to decrease the area within which gasworks could lawfully be erected.

It is urged that, where the exercise of legislative or municipal power is clearly within constitutional limits, the courts will not inquire into the motives which may have actuated the legislative body in passing the law or ordinance in question. Whether, when it appears that the facts would authorize the exercise of the power, the courts will restrain its exercise because of alleged wrongful motives inducing the passage of an ordinance is not a question necessary to be determined in this case, but where the facts as to the situation and conditions are such as to establish the exercise of the police power in such manner as to oppress or discriminate against a class or an individual the courts may consider and give weight to such purpose in considering the validity of the ordinance. This court, in the case of *Yick Wo* v. *Hopkins*, (118 U. S. 356,) held that although an ordinance might be lawful upon its face and apparently fair in its terms, yet if it was enforced in such a manner as to work a discrimination against a part of the community for no lawful reason, such exercise of power would be invalidated by the courts.

In some of the States, perhaps in most, the right to build and maintain gasworks is derived from the State, but subject to municipal control as to the use of the streets and the prices to be charged to consumers. In Ohio this price is regulated for stated periods. Could it be successfully maintained that after the erection of the works and the fixing of prices for a term of ten years, at the expiration thereof and exercising the right to fix prices for a new term, the council could arbitrarily, and with a view of compelling the sale of the works to the municipality or a rival company, fix the rate at a price below the cost of gas to the producer and at such a rate as to be ruinous to the business? In *State ex rel. The Attorney General* v. *The Cincinnati Gas Light & Coke Co.*, (18 Ohio St. 262,) it was held to be the legislative intention, in empowering city councils to regulate the price of gas, to limit such companies to fair and reasonable prices, and if in the colorable exercise of this power a majority of the members of the council, for a fraudulent purpose, combine to pass an ordinance fixing the price of gas at a rate at which they well know it cannot be manufactured and sold without loss, such an ordinance would impose no obligation on

the company. This case was cited with apparent approval by Mr. Justice Matthews in delivering the opinion of this court in *Yick Wo* v. *Hopkins supra,* and see Dillon Municip. Corps. 4th ed. § 311.

In this case we think the allegations of the bill disclose such character of territory, such sudden and unexplained change of its limits after the plaintiff in error had purchased the property and gone forward with the erection of the works, as to bring it within that class of cases wherein the court may restrain the arbitrary and discriminatory exercise of the police power which amounts to a taking of property without due process of law and an impairment of property rights protected by the Fourteenth Amendment to the Federal Constitution.

It is also urged by the defendants in error that a court of equity will not enjoin prosecution of a criminal case; but, as we have seen, the plaintiff in error in this case had acquired property rights which by the enforcement of the ordinances in question would be destroyed and rendered worthless. If the allegations of the bill be taken as true, she had the right to proceed with the prosecution of the work without interference by the city authorities in the form of arrest and prosecution of those in her employ.

It is well settled that where property rights will be destroyed unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a decree of a court of equity. (*Davis & Farnum Man. Co.* v. *Los Angeles,* 189 U. S. 207–218, and cases therein cited)

Upon the whole case, we are of opinion that the demurrer should have been overruled and the city of Los Angeles put upon its answer.

*For the reasons herein stated, the judgment of the Supreme Court of California is reversed and the cause remanded to that court for further proceedings not in conflict with this opinion.*

# Supreme Court of the United States.

No. 108.—October Term, 1904.

Martin Daly, Plaintiff in Error,
*vs.*
Charles Elton, Chief of Police of the City of Los Angeles.

In error to the Supreme Court of the State of California.

[November 14, 1904.]

Mr. Justice Day delivered the opinion of the Court.

This case is practically determined by views expressed in *Dobbins* v. *The City of Los Angeles*, just decided. It was a petition for a writ of *habeas corpus* to discharge Daly from custody, in a prosecution under the ordinance under consideration in the Dobbins case. The prayer of the petition was denied and the writ discharged. (*In re Daly*, 139 Cal. 216.) Under the California practice, in the absence of issue joined the allegations of the petition are taken as true and the facts alleged therein are taken as admitted. (*In re Smith*, 77 Pac. Rep. 180.) The petition made allegations attacking the ordinance which, if true, would render it invalid for the reasons stated in the Dobbins case, *supra*, and the petitioner upon the record made should have been discharged from custody.

*It is therefore ordered that the judgment of the Supreme Court of California be reversed and the cause remanded for further proceedings not inconsistent with the views announced in the Dobbins case, supra.*

True copy.

Test:

*Clerk Supreme Court, U. S.*